

POLITICAL
REFLECTIONS

ON THE LATE
COLONIAL GOVERNMENTS:

IN WHICH

Their original CONSTITUTIONAL DEFECTS
are pointed out, and shown to have naturally produced the REBELLION, which has unfortunately terminated in the Dis-
memberment of the BRITISH EMPIRE.

BY AN AMERICAN.

*Joseph Galloway, Esq.^r
of Philadelphia.*

LONDON:

Printed for G. WILKIE, No. 71. St. Paul's
Church-Yard. MDCCLXXXIII.

[Price 3 s. sewed.]

1874

ADVERTISEMENT.

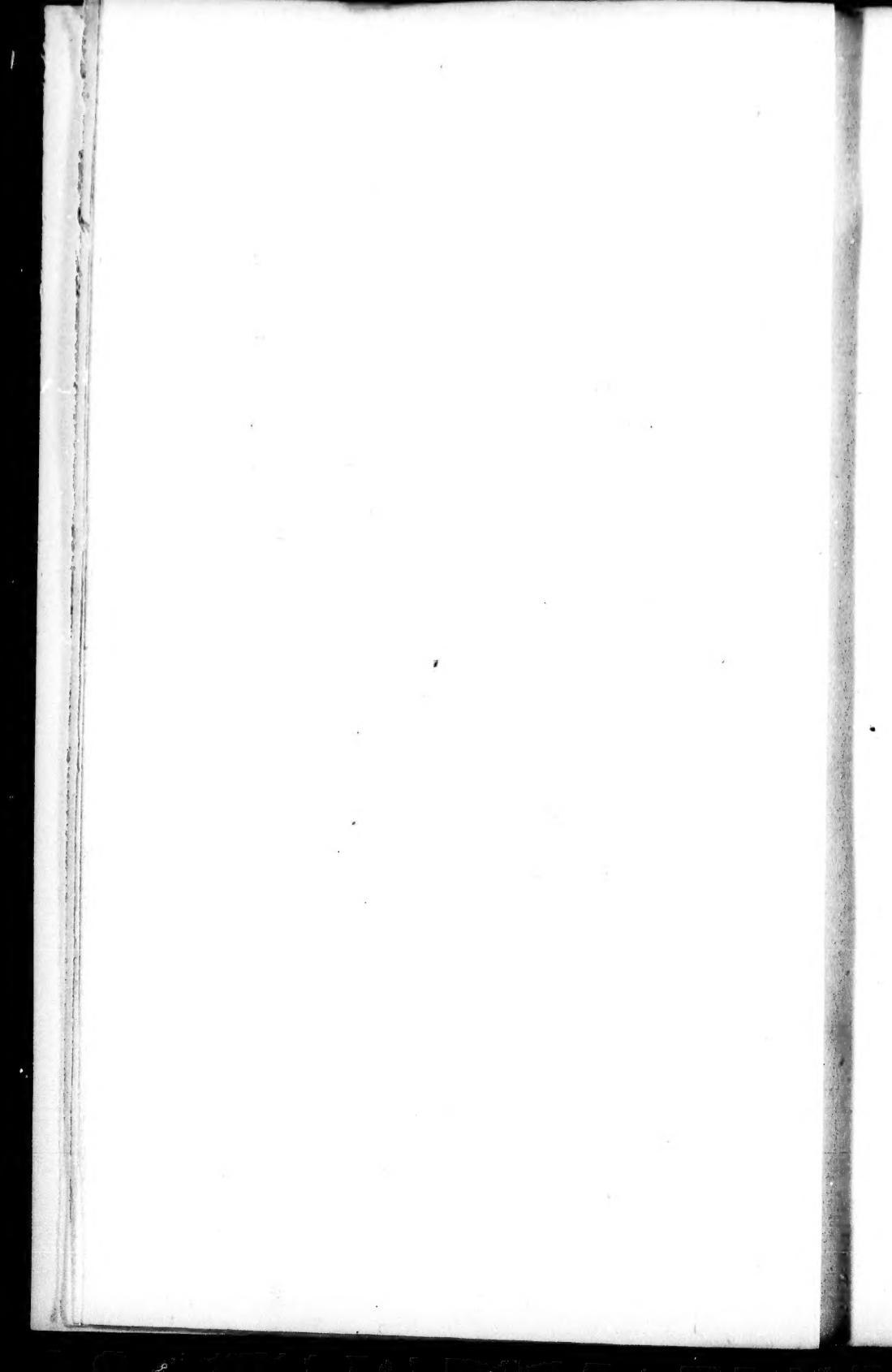
THE following REFLECTIONS contain a brief History of the Conduct of the American Colonies, from their First Settlement to the late Dissolution of their several Governments. The Author, in committing them to paper, had two objects in view. He hoped that the power of Great Britain, which he knew was abundantly sufficient if wisely directed, would have soon reduced the Rebellion. In that case, the old Colonial Governments being entirely dissolved, he conceived that new ones must be established. To unfold the defects of the former systems—to trace their incongruity and repugnancy to the principles and nature of the Government to which they ought to have been made subordinate, and to prove that those defects were the true causes of the revolt, he thought, might contribute to a more permanent union between the Two Countries; because it would

ADVERTISEMENT.

enable the Politicians who should be concerned in forming it, to avoid those defects, and to found it on more rational and solid principles. Besides, he considered, should not that fortunate event take place, those Reflections might be of importance to mankind; and, in particular, to those Historians who may hereafter undertake to unfold the latent principles which have gradually and imperceptibly produced an event that has terminated in the Dismemberment of a great Empire, if not in its final Ruin.

CONTENTS.

	Page
<i>OF the general Principles of Govern- ment, - -</i>	i
<i>Of the fundamental Principles of the British Government, - -</i>	12
<i>Of the Right of the Crown to establish in- ferior Societies, - -</i>	21
<i>Of the Right of Property in the Territory of the American Colonies, -</i>	42
<i>Of the Royal Governments, -</i>	48
<i>Of the obsolete Charters granted for the Settlement of America, -</i>	63
<i>Of the Charter of Maryland, -</i>	83
<i>Of the Charter of Pennsylvania, -</i>	115
<i>Of the Charters of Rhode-Island and Con- necticut, - -</i>	187
<i>Of the Massachusetts Charter, -</i>	206



P O L I T I C A L
R E F L E C T I O N S
O N T H E
R O Y A L , P R O P R I E T A R Y , A N D
C H A R T E R G O V E R N M E N T S
O F T H E
A M E R I C A N C O L O N I E S , &c.

C H A P . I.

On the general Principles of Government.

AS I intend to treat of the nature of inferior and subordinate societies, and of the laws by which they ought to be constituted, pointing out, at the same time, the advantages or mischiefs which must ensue from a strict adherence to, or a deviation from, those laws ; it will be necessary, in order to take up the subject from its proper foundation, to say something on Government in general, the great principle by which the union of every society is formed and preserved.

B

Civil

Civil society is a political system, formed by the union of individuals, who, putting their several powers under one sovereign direction for their better security, agree to yield obedience to it. In order to form this politic body, certain fundamental laws must be established, and proper persons appointed to superintend the execution of them, and empowered to compel the obedience of every individual.

The various forms of Government are either simple or mixed. The first are established on principles peculiar to themselves; and being different from each other, are constituted by different modifications of the principles of civil society, and the variant constructions of the legislative and executive powers, from whence they assume the monarchical, aristocratical, or democratical characters. The latter are produced by an assemblage of the principles of the former.

All Governments, of whatever form, are founded on the following general laws, which are essential to their existence, and without
which

which there could be no such thing as civil society.

1. That there must be some supreme will, or legislative authority, competent to the regulation and final decision of every matter susceptible of human direction, which relates to the safety and happiness of the society.

2. That every member and part of the society, whether corporate, official, or individual, must be subordinate and subject to this supreme will and direction.

3. That there must also be a supreme executive power; to superintend and enforce the administration and execution of the laws.

But besides these general principles, which are essential to all Governments, of whatever form or construction, there are certain laws and establishments which are peculiar to each particular form, on which its constitution and essence depend, and which are as inconsistent with those of a different form, as the rules peculiarly necessary in building a

house are with those in building a ship. When, therefore, it is determined to establish one particular form of Government, whether it be monarchical, aristocratical, democratical, or mixed, care must be taken, in forming it, that such materials, and such order of construction, are not used, as are adapted to a different form, and which must defeat the intention. A monarchical, aristocratical, or mixed scheme of Government, formed on democratical principles, would be a gross political absurdity ; and the terms can prove no more, than that what was intended for a monarchy, an aristocracy, or a mixed government, turns out to be a democracy.

In every production, either of divine or human invention, to be found among the works of nature or of art, whether in the rational, animal, vegetable, or inanimate world, there is a systematical combination and arrangement of principles and parts, which determine its species, constitute its nature, and preserve its identity. Should this order be violated in the productions of nature, could we suppose the properties and principles of things to be shifting and shifted from one to
7 another,

another, without reference or regard to their original intention ; what a confusion of qualities ! what monstrous and useless productions, would be the consequence ! and how short the duration of the system, where such confusion exists ! In like manner, if, in works of human construction, we should join the distinguishing principles and parts of one system to another of a different class, without regard to its propriety or end, it would be as absurd and ridiculous as Horace's image, *Humano capiti*, &c.

This is as true with regard to the different forms and constitutions of Government, as in any other instance. The genius and character, the fundamental laws and principles, of that particular form we mean to establish, must always be regarded in the construction ; and if we mean to preserve it, care must be taken that no heterogeneous ingredients or principles be admitted, because they must tend to change its nature, and in the end to destroy it.

But, although the fundamental laws of the three simple forms of Government are essentially different in their own natures, and can-

not, with any degree of propriety, belong to each other, and if introduced must weaken, and in the end destroy them ; yet experience has proved, that the fundamental principles of these different forms may be brought to a friendly co-operation for the public good. They may be so combined and tempered, as it were, into one system, as to form a counterpoise to each other, and a remedy against the mischiefs which are naturally produced by each system in its separate state. Such a system has been established by the wisdom of our ancestors. An enquiry into its excellence has led authors, both foreign and domestic, to celebrate its constitution, as the best adapted to maintain the reasonable liberty of man to the longest period of existence ; and our own experience of its happy effects has led every Englishman to admire it, and wish for its continuance, always excepting those who prefer their own private views to the happiness of the public, and who expect to find their account in changes and revolutions.

Taking it therefore for granted, that we mean to support and preserve that excellent system of Government which has been established

blished by the experience and wisdom of our ancestors, and maintained at the expence of much blood and treasure, it follows, that we should carefully avoid every thing that has a tendency to weaken and destroy it. The political, like the natural body, is liable to dissolution, either by external violence or internal decay and disease. Its existence may be prolonged or shortened, by the means which shall be used by reason or folly to preserve or destroy it.

The health, vigour, and duration of every system, depend on a strict attention and adherence to those original laws and principles by which it was formed. Every deviation from them, every change in the structure of its parts and members, every introduction of heterogeneous matter, must produce disorder and confusion.

Thus in the political system, whatever be its form, whether monarchical, aristocratical, democratical, or mixed, by the admission of laws, inferior politic bodies, public boards or offices, established on principles dissimilar and repugnant to the essential and funda-

mental laws of the State, and to the nature and genius of the society, that original polity upon which it was founded, must, in the nature of things, become changed and corrupt. The principles of each different form will find their advocates. Some men will adhere to one form, others to another. Different and opposite opinions, attachments, and aversions, will become fixed. Factions, and a perpetual competition for power, will succeed; which cannot fail in the end to destroy the unity and harmony of the society.

We have seen, more than once, the excellent structure of the English constitution nearly overturned by the too great prevalence of these different principles. At some times, the aristocratic and democratic influence has been nearly lost under the too great weight of the monarchic; at others, the monarchic and democratic have been nearly swallowed up by the aristocratic; and at another, the monarchic and aristocratic have been totally destroyed by the democratic.

Men educated under one form of government can rarely, if ever, be reconciled to the
manners,

manners, laws, and principles of another. It is education alone which forms and fixes human habits, manners, attachments, and aversions. This is as true in public as in private life, in politics as in religion. Train up a child in a particular mode of faith, and he will dislike and reject all others. So men, educated in the principles of one form of government, will ever esteem and prefer it, because it is from that they have derived their safety and happiness: and not knowing the blessings which others afford, they believe that those they possess are the most valuable, and prefer them, however inferior, to others they know little or nothing of. Thus political opinions, public affection and aversion, and the national attachment, in every society, become established and fixed. And hence it is, that a republican prefers the disorder and confusion to which he has been familiarised by education, to the substantial safety and blessings of a mixed monarchy; and the enslaved Spaniard or Turk, the cruel despotism of their respective tyrants, to the mild and certain protection of the best formed governments.

To

To illustrate this truth yet further, let us suppose, that Charles the Second had, at the Restoration, done what his predecessor James the First did in America, *viz.* that he had established all the corporations, and inferior societies in Britain, on principles merely monarchical, declaring, that the people within them should be governed by "such laws, ordinances, and institutions," as should be made and given by himself and his successors, to the exclusion of the authority of Parliament; or that he had in Britain, as he did in America, instituted throughout the kingdom, a number of democratical societies and corporations independent both of the Crown and Parliament; it is easy to perceive what must have been the unhappy consequences. In the first instance, the British Government would have been changed from a mixed form into an absolute monarchy, and the people subjected to the despotic will of their Prince; in the second, into a number of diminutive democracies, perpetually liable to all the mischiefs of faction, discord, and confusion. And in both instances, those principles of polity upon which the beautiful and excellent fabric of the British Constitution is founded,

would

would have been long ere this time totally eradicated. Education, that tyrant of the human mind, which seldom fails to bind it in fetters never to be loosened, would have rendered Britons as fond of their tyranny or anarchy, as the Spaniard or the Swiss.

C H A P. II.

On the fundamental Principles of the British Government.

IN every society, I have already observed, there are certain peculiar and essential principles. Those principles are the original decrees and fundamental laws which precisely describe the form of its Government, create all the various parts and members of the politic system, and settle and define the powers, duties, rights, and privileges, of every member, whether corporate, official or individual, marking their limitations, extent, and different uses. It is these decrees which form the great basis of the State, upon which the structure of its Government is established, and by strict adherence to which it can alone be preserved. And as they are the fundamental rules by which the particular form of the society is to be ever maintained, they are in their nature unalterable, except by general consent, or by the supreme authority of the State.

The British Government is of a mixed kind, and may be justly styled a mixed monarchy, formed by a different modification, and a profoundly wise adjustment and counterpoise of the great essential principles of the three simple forms, with a Monarch at its head. Its fundamental laws and essential principles are to be seen in the great charter of rights, often before, but particularly and clearly settled and confirmed at the Revolution. Much might be justly said in the style of panegyric on the wisdom which formed it, and on the excellence of its structure. But it must here suffice to observe, that the greatest authors of credit, whether British or foreigners, acknowledge, that of all systems of polity, it is the best calculated to preserve and secure the natural and reasonable rights of mankind.

In the construction of this most excellent fabric, if we may decide on the motives of our ancestors from evident historical facts, we may conclude, that either from reason or experience, or perhaps from both, they perceived the mischiefs incident to the simple forms of Government.

1. That

1. That the transition from monarchy to tyranny was easy, natural, and certain.

2. That aristocracy was ever productive either of despotism, or of wild and confused dominion; that when union and harmony existed in its supreme council, it often degenerated into tyranny; and whenever jealousy, divisions, and competition for power arose, into debility and anarchy. And

3. That democracy was ever tumultuous, seditious, and weak; incapable of preserving its internal peace, or defending its subjects against an external enemy. That a frequent change of rulers alternately contending for power over their competitors, as well as over the society in general, created a perpetual discord and animosity among the members of the State, introduced a diversity and instability in their laws, and consequently in the habits, manners, and attachments of the people; rendered the Government itself factious, weak, and confused, and subverted that security of the natural rights of man, which is the sole aim and end of their entering into civil society.

Impressed

Impressed with these just ideas of the mischiefs incident to the three simple forms of Government, our ancestors, like the skilful physician, who mixes up medicinal simples of different and opponent qualities, in order to moderate their violent and dangerous extremes, and to produce from the whole a salutary effect, judiciously tempered the principles of the simple forms of Government together, so as to obtain what mankind have in view by entering into civil society, namely, natural liberty perfectly and justly regulated and secured by political laws, or, at least, as much so as human wisdom could direct. They placed monarchy and democracy, the two dangerous extremes of civil policy, in opposite scales, as a check and balance to each other.

But wisely reflecting that two opposite and independent principles, acting within the same sphere, would soon become competitors for superiority, and naturally lead them to invade the rights of each other; and that this must throw the society into disorder, and in the end destroy it, they yet more judiciously added to the system, an indifferent, disinterested

terested, and independent power, which should see and feel it to be both its interest and duty, to throw its weight into the scale opposite to that which should be found exceeding its prescribed bounds, and acting inconsistently with the safety and design of its institution; and to restore, at all times, whenever enervated, the true principles of the constitution to their perfect balance and former energy.

Upon these principles the British State, consisting of three different independent orders, was established. And to prevent all contrariety and confusion in the laws, they were incorporated with each other by a fundamental decree, that the assent of all should be ever necessary to the validity of every act, or final decision, by which the society should in future be governed. And the more effectually to enable them to maintain these respective shares of power in the State, and to check and balance the excess of legal authority in each other, they were vested with certain distinct and independent rights, powers, and privileges, perfectly limited and defined, and adapted to their respective establishments.

And

And as all laws must be nugatory and ineffectual without execution, there was, of necessity, appointed a supreme executive authority, the representative and trustee of the legislature, to superintend the preservation of the society, by carrying into execution the fundamental decrees of the society, as well as the supreme will of the legislature, from time to time signified by its laws; to appoint and regulate, agreeably to their direction, and the spirit of the constitution, the several inferior orders and members of the State, whether political, official, or individual; and to superintend the allegiance and obedience of the subject to whatever the constitution and its laws commanded.

To be more circumstantial, it is evident from an examination of the British Government, that its fundamental principles and laws are,

1. That the supreme legislative authority should consist of three orders or estates: A Monarch, who shall hold his office in hereditary succession; a House of Lords, who shall

C

shall derive their dignity and power from that monarch, and yet be equally independent of him and of the people, holding their dignity and rank in hereditary succession ; a House of Commons, the representatives of the people, deriving from them their authority ; and that the monarch should be the supreme or first in dignity in the *Supreme Legislative Council*.

2. That each of the three orders should possess their peculiar and independent rights, powers and privileges, to enable them to support their respective ranks and power in the State.

3. That their joint concurrence and assent should be necessary to the validity of all legislative acts and regulations, because, upon this joint concurrence, the unity of the State, and the uniformity and harmony of its conduct, and consequently its strength, safety, and happiness, depend.

4. That there should be one *sovereign representative* of the three legislative branches of the State, whose office and duty it should

should be to superintend the preservation of the fundamental principles and laws of the society, to constitute the inferior political bodies and offices, agreeably to those principles and laws; and to carry into present execution all their joint decisions throughout all its territories and dominions.

5. That neither the King, Lords, nor Commons legislative, nor the King, their *sovereign representative*, should possess a power to alter or weaken the constitution of the State, or to do any act inconsistent with its fundamental laws, or divest either himself or his successors, or either of the Houses of Parliament, of their distinct and separate rights, powers, and privileges; because they were vested in them for the preservation, and not the destruction, of the State, and because they are not their private rights, but an unalienable trust in them for their successors.

6. That these fundamental laws should ever be in their nature unchangeable, and not be violated or impaired by any of the distinct orders of the State, and only by the general

20 *Principles of the British Government.*

consent of the society, or by its supreme legislative authority.

7. That the common law, which has been sanctioned by ancient usage, and the statutes enacted by the legislature, should be the great lines by which the conduct of the whole society, and the obligations of duty and obedience, should be measured and directed.

Having this abstract view of the British Government before us, which I have thought a necessary foundation for my subsequent arguments, it will enable me to draw nearer to the matter I mean to examine, which will be seen in the following Chapters.

C H A P. III.

*On the Extent and Limitations of the Rights
vested in the Crown, to establish inferior
Societies or Corporations.*

THE right of constituting inferior societies, as I have before shewn, is lodged in the Crown; but it is unfortunate, that of all the prerogatives this has been the least ascertained. Very little respecting it is to be found in the authors who have treated on the fundamental or general laws of the British constitution. It therefore seems, that the conduct of the Kings of this realm, in the exercise of this right, has not been called in question. They have been left to exercise it in a manner altogether arbitrary, without opposition. That this should be the case in a free Government, where the illegal conduct of the several orders of the State has been so constantly watched and opposed, upon first consideration, appears a little strange. The reader will expect an attempt at least to account for this political paradox.

The exercise of this prerogative is local. It does not, like many others, immediately affect the society in general. None are concerned in it but the Crown and the individuals incorporated. The concurrent assent of the King, and of those individuals, is therefore only necessary to the use of it; and it is not reasonably to be expected, that the latter will complain of it, however illegally exercised; because the privileges granted are always more extensive than those held under the general establishments of the principal society. Besides, the mischiefs arising from an illegal exercise of it to the society at large, are so remote, so gradual in their increase, so secret in their operations and effects, that they are scarcely perceived, and therefore do not alarm the people, nor become the subject of legal discussion. To which I may add, that the most licentious and arbitrary use of this prerogative having been made in the institutions of the inferior communities in our foreign dominions, its mischievous and dangerous effects to the union and welfare of the principal society have been concealed from the jealous eyes of Britons.

But

But although we have not legal adjudications to ascertain the extent of this prerogative, yet principles from which it may be traced, and laws by which it may be perfectly known, are not wanting. Its true limitations are to be found, clearly defined, in the original decrees and fundamental laws of the British Government. Here every right, power, and privilege, vested in the several orders of the State, is conferred for the same intent and purpose; namely, to strengthen, not to weaken, to preserve, not to destroy, the established constitution. By this first and great law, which is essential to every civil society, and cannot be abrogated, the powers of every establishment, from the sovereignty down to the lowest ministerial office, is limited and restrained. And if on any occasion their acts should have a different tendency, *they are void in themselves*. If this was not the law in every society, the rights and powers, which, by the original decrees of the State, were created and established to preserve the civil constitution, might, at the pleasure of the persons holding them, be destroyed*.

The

* Although the truths contained in this paragraph are self-evident, it may not be displeasing to the reader to know,

The monarch in the British Government as I have shewn, possesses two capacities. In one, he is

that they are confirmed by every author of credit on politic law; such as Puffendorff, Montesquieu, Vattel, Burlamaqui, &c. The opinion of the last, because delivered with the most conciseness and perspicuity, I shall here add. This ingenious author, treating "of the essential Characters of Sovereignty, its Modifications, Extent, and Limits," tells us, "That it entirely depends on a free people to invest the sovereigns, whom they place over their heads, with an authority either *absolute*, or *limited by certain laws*, provided these laws contain nothing contrary to justice, nor to the end of Government. These regulations, by which the supreme authority is kept within bounds, are called the *fundamental laws* of the State."

"The *fundamental laws* of a State are not only the decrees by which the *entire body of the nation* determine the form of Government, and the manner of succeeding to the Crown; but are likewise the covenants betwixt the people and the persons on whom they confer the sovereignty, *which regulate the manner of Government*, and by which the *supreme authority is limited*."

"These regulations are called *fundamental laws*, because they are the *basis*, as it were, and *foundation of the State*, on which the structure of its Government is raised; and because the people look on them as their *principal strength and support*."

"The fundamental laws are the precautions taken by the people to oblige sovereigns to employ their authority, agreeably to the *general rule of the public good*."

And in another place he adds, "After the King has assumed his authority, whatever he attempts afterwards, contrary to the formal engagement he has entered into, shall be *null and void*. And even if there should happen an extraordinary case, in which the sovereign thought it
"conducive

is the first and most dignified of the three orders of the supreme authority. In this capacity, it is his right, after deliberation, to disapprove, or finally to give validity to all acts intended for the regulation and government of the society. In the other capacity, he is the sovereign executive authority, bound to observe himself, and to compel the obedience of all the members to the original decrees upon which the structure of the Government is raised, and to carry every other subsequent law of the supreme authority, made for the preservation and safety of the society, into perfect execution. To enable him to do this, certain peculiar rights and powers, called *prerogatives*, and among others, those for constituting inferior communities or corporations, have been vested in him; all of them for the purpose of maintaining the rights, powers, principles, and particular polity established in the form and

“ conducive to the public good to deviate from the fundamental laws, he is not allowed to do it, of his own head, in contempt of his solemn engagement, but in that case, he must consult the people, or their representatives. Otherwise, under pretence of some necessity or utility, the sovereign might easily break his word, and frustrate the effects of those precautions taken by the nation to limit his power.”

structure

structure of the mixed Government of which he is the sovereign executive head.

In a politic capacity thus limited and restrained, it is not difficult to mention a variety of acts, which the monarch cannot, i. e. ought not, because forbid by the fundamental laws to do, and which when done, are void in themselves. It is a maxim of the British constitution, that "*the King can do no wrong.*" This maxim, when rightly explained by the laws, of which it is a part, means no more than this. The King, in his natural capacity as a man, is liable to human frailties, and therefore may err; but in his politic capacity, in which the constitution alone considers his acts, where he has the aid of wise men, and the certain rule of the original decrees and general laws to direct his actions, it shall be presumed that he will not violate his trust, nor deviate from the fundamental decrees prescribed for the rule of his conduct; and if he should be led into an error, it shall rather be imputed to his counsellors than to him; and principally, because every act of the King, which is inconsistent with the law, is
void

void in itself; and an act void can neither injure the orders of the State, nor any of its political members, nor even any individual of the society, inasmuch as the Government is established on principles which give to every member a perfect remedy for every wrong received. Upon this confidence and policy, in order to preserve the dignity of the monarch, and to secure his conduct from censure, and his person from danger, which is of the first importance to the safety of the society, this maxim has been wisely adapted. If this mode of reasoning be just, as I trust it is, this maxim amounts to no more than that, when the King strictly conforms to the original decrees, and the subsequent laws of the society, "he can do no wrong." And when he does not conform, in the exercise of his royal prerogatives, his acts, though void in themselves, shall not be imputed to him, neither in his natural nor political capacity; because the law gives to the party injured by a violation of his political trust, a perfect remedy. Under this construction the maxim is reconciled to reason; to that profound wisdom upon which our truly excellent system
of

of polity is founded. But when we contend, as has been contended, that every charter granted by the Crown to individuals, must, by the sanctity of the compact, however dissonant to the original decrees of the society, and inconsistent with its safety and happiness, remain valid and inviolable; it involves the most evident of all political absurdities*.

Under this exposition of the maxim, there are many acts which a King cannot do legally; or, if he should do them contrary to law, they are *void in themselves*, ought to have no legal effect, and are to be considered as *not done*.

1. A King cannot alter the established constitution of the Government, nor do any act which has that tendency, because he is appointed to maintain it.

* In this light the learned Burlamaqui understands this maxim: for, speaking of limited sovereignty, he says, "It is a happy incapacity in Kings, *not to be able to act contrary to the laws of the land.*"

2. He

2. He cannot take away the rights of either of the Houses of Parliament ; nor even those properly belonging to the lowest in order of the members of the society ; because they are not his, but the rights of others, and vested in them for the preservation of the Government. Nor can he divest the Crown of any of its prerogatives, because they are vested in him in trust for the public safety, and are not only his, but the fiduciary rights of his successors, and are therefore in their nature unalienable.

3. He may constitute courts of justice within the dominions of the State, wherever necessary ; but he cannot erect a new one to interfere with the jurisdiction of another already established, or in mode or substance variant from the established law and custom of the realm.

4. He may appoint to offices known to the laws, but he can neither constitute a new office unknown in the Constitution, nor grant to an old one new principles or powers, inconsistent with its laws. There
are

are some offices grantable during good behaviour, because intended by the spirit of the constitution to be independent of the Crown; and others during pleasure, because meant to be dependent on it. The nature and safety of the society requiring it; he cannot, therefore, grant the first *during pleasure*, nor the last *during good behaviour*. He may constitute a Lord Lieutenant of Ireland, or of a county, or a governor of a province, but he cannot grant to them an estate for life, in tail or in fee, in those offices, because it would deprive the sovereign executive power of the State of its superintendence, check, and controul, over the illegal and licentious conduct of the servants of the Crown, and of compelling them to act agreeably to the essential and fundamental laws. He would be no longer the great conservator of the peace and harmony of the society which is placed under his immediate care and direction.

5. For reasons equally evident, he cannot constitute inferior communities with rights, powers, and privileges independent of the State; because this would be either to dismember them from it, or to establish an

imperium in imperio, a State within a State, the greatest of all political MONSTERS * ! nor with such privileges as are repugnant to, or variant from, the essential principles of the society ; because this would beget competition and discord, and throw the system of Government into irretrievable confusion.

6. He cannot do any act whatever, by which the subordination and obedience of the inferior politic societies to the supreme authority shall be relinquished, or in any degree diminished ; and consequently he cannot

* The learned Puffendorff, in treating of the establishment of inferior societies, tells us, " That they may be either lawfully or unlawfully constituted. And that with regard to all *lawful bodies*, it is to be observed, that whatever rights Kings possess, or whatever power they hold over their members, is all under the determination of the supreme authority, which it ought, on no account, to oppose or overbalance. For otherwise, if there could be a body of men, *not subject to the regulations of the civil Government*, there would be a *State within a State*. If we look on these bodies or systems in a State already settled, we are then to consider what was the intent of the supreme Governor in *founding or confirming such a Company* ; for if he hath given or ascertained to them, in express words, an *absolute independent right* with regard even to *some particular affairs*, then he hath *plainly abdicated his authority*, and, by admitting *two heads* in the constitution, hath rendered it *irregular* and MONSTROUS."

exempt

exempt them from that authority in any case, and more especially in matters of taxation, upon which the defence and safety of every part of the empire materially and essentially depend.

7. Although he may grant to them a right to make municipal laws, for the better prosecution and advancement of their particular designs, and for local purposes, yet he cannot discharge them from the force of the general laws of the land, from the common and statute law. They are the general institutes which were intended to pervade the whole society, for the government of its morals, and to preserve an unison of opinion and attachment in all the members in regard to the State. The first has been settled and confirmed by ancient usage and immemorial consent; and the second consists of acts of the supreme authority; and no inferior power can, without a palpable absurdity, be presumed to have a right to abrogate or alter such acts.

8. A King may grant to an inferior community a power to raise money for the support of its members, for the preservation of the order,

order, peace, and œconomy of the body politic, and to promote the particular designs of its institution; but he cannot give to it a right to grant, raise, and levy national aids, nor even its proportion of them.

1. Because this right does not belong to him, and neither a King nor a man can give what he has not. It is the peculiar right of the supreme authority, to whose care and superintendance the protection and defence of the society are in the first instance committed, and which, of necessary consequence, ought alone to possess the right of taking from individuals a just proportion of their property, for the safety of the rest, and the security of their persons.

2. Because this would be a diminution of the rights of the supreme legislature in a point most essential to the safety of society, and in a matter upon which that authority, and none other, can possibly be competent to judge and decide.

3. Because no inferior society ever was; nor can be, made competent to the exercise

D

of

of this right. They cannot possess a capacity to judge either of the occasion, or necessity, or of the quantity of aids necessary to the national defence, nor to obtain that information which is necessary to enable them to ascertain their own proportions, as they cannot possess a power over the other parts of the society.

4. Because those inferior societies, having local, partial, and different interests and prejudices, and being liable in their deliberations and decisions to the influence of those interests and local prejudices, there can be no certainty, no confidence reposed in them, that they will discharge whenever necessary, or with equity and justice to the rest of the nation, this primary and most essential of all political duties.

5. If the executive authority may grant such a privilege to one inferior society, it may to a hundred, or to all, and by these means effectually divest the Parliament of the right to determine on the occasion, the necessity or quantity of aids requisite to the general safety; a right which forms the first
and

and greatest check against the absolute authority of the Crown, and is indispensably necessary to the safety of the society.

Although a King may incorporate inferior societies, or bodies politic, yet he cannot confer a right to another to make such incorporation, because the right is a *royal* and unalienable franchise; nor can he by his own act, much less by a delegated authority, constitute them in any form, or upon any principles of polity, repugnant to, or variant from, the form and spirit of the British constitution; for this would subvert its different establishments, and destroy their union and harmony.

Lastly, this prerogative is settled in the Crown, to enable it to maintain, not to weaken, to preserve, not to destroy, the order, unity, and spirit of the Government. The Government is a mixed monarchy, so formed and established as to check and suppress the licentiousness and arbitrary power of the three simple forms of civil society, and to reduce their excesses to that balance which is necessary to human liberty

and happiness. It is therefore a conclusion drawn from the strongest principles of reason, that a King cannot constitute these inferior societies without those checks and that balance; nor on principles purely monarchical, aristocratical, or democratical, or in such manner as to render the principles of either so predominant, as to be able to suppress the due weight and influence of the others in the scale of Government: for by this means he may imperceptibly efface all respect and attachment to the form of our excellent civil constitution, throw it into disorder and confusion, and in the whirlwind direct the storm to absolute monarchy.

From these limitations of the prerogative of the Crown, we may easily perceive what ought to be the forms of the inferior societies in a mixed monarchy. But to make the argument more evident, I shall first explain what they ought to be, agreeably to the fundamental rules of the three simple forms of civil society; for all of them have their fundamental laws, from which the sovereign authority, or its executive representative, ought

ought never to deviate. In a monarchy, these inferior societies, by the fundamental laws of its constitution, ought to be governed by a single person appointed by the monarch, and removable at his pleasure. This person ought to hold both the legislative and executive authority within the corporation. In an aristocracy, they should be governed by a select dignified few ; and in a democracy, by a number of persons often elected by the people to represent them. In this manner only can the nature, uniformity, and spirit of each system, and the subordination of its members to the State, be duly preserved.

In a mixed monarchy, the structure of its inferior societies ought in like manner to correspond with that of the State. It should consist of a governor, or chief magistrate, appointed by the Crown, and removeable at its pleasure ; of a council, deriving their dignity and power also from the Crown, but after appointment, equally independent of it and the people ; and of a body of men elected by the people to represent them in the inferior body politic ; and each of them should be vested with their distinct independent rights,

but only with one joint legislative authority over the society, and that for local purposes; and the chief magistrate ought to hold the executive rights and powers, subject to the directions of the supreme executive magistrate. The body politic thus subordinate, must be subject in all things, in its legislative capacity, to the supreme authority of the State. In short, to make a perfect corporation under any Government, be its form what it may, it ought, in all sound policy, and must be, if agreeable to the fundamental laws of the State, established on the same principles with those of the great politic body to which it belongs. In this case the powers, rights, and privileges of the inferior community, will accord with, and strengthen those of the State, be productive of the same spirit of laws and customs, and inculcate and fix in the people the same manners, habits, political opinions, aversions, and attachments. They will be daily instructed to love and venerate the principles of the chief Government, because they receive their general protection and their particular privileges from them. All repugnant principles

ciples will be excluded, and indeed unknown ; and all the members of the society, however dispersed, will be led to act in a constant and uniform manner, with one will, directed to the same ends, the safety of the Government, and the public happiness.

To place this truth in a light yet more evident, let us suppose that a King of England, who is the supreme representative of the three several orders of the State, and bound to preserve their balance, influence and authority throughout its dominions, under pretext of his prerogative, should constitute all the inferior societies within the realm on monarchical principles, by conferring on a single person the sole power of making laws for the corporation, and superintending the execution of them ; or should he establish them on the principles of an aristocracy ; would not every candid and sensible man, who knows the nature and excellence of our present Government, pronounce with one voice, that it was an act inconsistent with the fundamental laws of our society, *done without authority, and void from the beginning?*

ning? And would not even the republicans, who have stood forth the zealous advocates of the democratical American charters, be the loudest in their clamours against such innovations?

To conclude these reflections : If the prerogatives of the Crown, in a mixed monarchy, are limited, in one respect, by the fundamental decrees of the society, they are in all. And if they are conferred on the Monarch for the purpose of preserving the uniformity of the State, and an harmony in the opinions of its members respecting its excellence, that which relates to the institution of inferior politic societies must be confined to the principles and restrictions I have before laid down. For if the Crown may deviate in any degree from the original polity and fundamental laws of the principal society in the establishment of its subordinate members, there are no other lines by which it may be restrained, none by which its extent may be decided. It is suffered to pass over the only boundaries settled by the constitution, into a field unlimited, and becomes unrestrained and arbitrary. And to suppose
this

this in a society where the rights and powers of every member of the State, from the sovereign authority down to a petty constable, are precisely ascertained and limited, is what all common sense will reject, and no sophistry can support.

C H A P. IV.

*On the Right of Property in the Territory of
the American Colonies.*

W HATEVER has been hitherto observed on the General Principles of Government, on those of the British State, and on the Right and Prerogative of the Crown to constitute inferior Societies, is intended as a foundation to support the subsequent reflections on the Provincial Governments; and yet one thing more remains to be added, before I proceed to them. A question has been made, in *whom* the property and dominion in the Colonies is rightfully vested? whether in the King, in some capacity distinct from, and independent of, his trust and political relation to the British State, or in him as the monarchical and executive representative of it?

This distinction has been invented by that part of the Colonists, who had resolved, in despite of the most extensive benefits received, and the awful obligations of their oaths,

oaths, to throw off their allegiance to the British Government, and to form themselves into independent States. For this purpose, they have acknowledged that their allegiance was due to the King in some capacity distinct from his relation to the State, while they have denied it to be due to the Parliament. They artfully and wisely concluded, that should they succeed in breaking the harmony between the Crown and the Parliament, and in rendering their powers independent of each other, jealousies would ensue, and that the latter would never assist the former in supporting his power over a people, who might be made the instruments of their own destruction. Upon this firm ground they further concluded, that when this separation of interests between the King and the Parliament should be effected, the task of throwing off their allegiance to the King would become easy. And therefore, to support this novel distinction, they have contended, that the discovery and settlement of America was made to *the use of the King only*, and not to *the use of the State, nor for the benefit of the British society*,

However

However novel and strange this distinction may appear to those who are acquainted with the principles of our Government, we have seen it warmly adopted by a number of men who style themselves Patriots, some of them of no less dignity than British Senators, and particularly by one of their most sensible leaders. This Gentleman §, in a plan laid before the public, has proposed, upon the imaginary justice and equity of this mode of reasoning, to erect each provincial Assembly into an independent Legislature, depriving the Parliament of all authority over it, and leaving it su' t only to the prerogatives of the Crown. That a man of sense should be so lost to consistency of character, as in the same breath to profess the warmest attachment and love for his country, and to propose a plan so ruinous to its true interest and welfare, is really astonishing.

However, ill-founded and absurd as this distinction may be, seeing it has been made to justify rebellion, and has been warmly

§ Mr. Burke.

espoused

espoused by some of those who are entrusted with the sacred rights and welfare of their country ; it calls for some attention. A little will show its fallacy. The manner of the discovery of America, the authority under which it was made, and the right of property and dominion acquired by it, afford unequivocal and perfect evidence of the truth.

The Colonies were discovered at the close of the fifteenth century, by Sebastian Cabot, under a commission granted by Henry the Seventh. Henry possessed only two capacities in which he could acquire property, one private as a man, the other public as the supreme executive representative of the King, Lords, and Commons, of England. In the first, he could take property to his own use ; in the second, territory and dominion to the use of the State. The commission was issued under the *great seal of the State*, the symbol of its sovereign authority, which proves, that he acted in his *politic*, and not in his *private* capacity. The language of the Commission, in every clause, speaks the same truth. It is, "*We*" in his *politic*, and not in his *private* capacity, give and grant licence to sail in
pursuit

purfuit of discoveries, under “our,” not under “*my*” banners, standards, and insignia,”—
 “to affix *our* aforefaid banners, standards,
 “and insignia, on any ifland or continent
 “newly difcovered;” and to poffefs and occupy
 “fuch difcovered territory as our vaffals”
 (that is fubjects) “obtaining for *us* the domi-
 “nion, title and jurifdiction of the ifland and
 “continents fo difcovered.”

Had Henry given this commiffion in his private capacity, as an individual member of the Britifh State, the language of the patent would have been, “I give and grant, &c.” and not “We;” he would have fpoke in his private, and not in his politic capacity; or if fuch was his intention, whence did he derive his right? The moment he laid afide his politic capacity, he became a fubject, to be governed and directed in his actions by the laws of the fociety; and a fubject could have no right to affix the feal of the State to his deed; no right to grant to others a licence for the difcovery of countries; nor to change and transfer the allegiance of fubjects due to him in his politic capacity as Sovereign of the Britifh State, to himfelf, in his private, or any other
 I capacity.

capacity. From all which it is evident, if there had been no express declaration of the use of the territory discovered, that the discovery would not be to the use of the man who then was, or the man who should thereafter be the King of England, but to the use of the State under whose commission it was made by one of its subjects. And therefore, upon the discovery, the territory became legally vested in Henry and his successors, the supreme representative of the King, Lords, and Commons, the politic trustees and guardians of the people of Great Britain. Thus possessed of the Colonies, they became involved with his other political trusts, and inseparably annexed to the realm; and consequently they descended to his successors in like trust, and subject to the supreme legislative authority of the State, whose agent he was, and by virtue of whose authority he acquired the property.

C H A P. V.

On the Royal Governments.

A MERICA being thus annexed to the kingdom of England, became an object of its Government, and consequently of the exercise of the royal prerogative. The settlement, and government of the country required a division of it into districts, and the establishment of a number of incorporated and subordinate societies. The superintendence of the Crown and Parliament over them, and their constitutional relation and subordination to the State, required that they should be vested with certain limited powers and rights, to make bye-laws and ordinances for promoting the particular designs of their institution, subject always to the controul of the supreme Legislature.

The rules by which this ought to have been done; or, to be more explicit, the rights, powers, and privileges, which ought to have been granted, with their modifications and special limitations, are clearly defined in the nature of the British Government,

ment, and the fundamental laws which I have briefly recited in the second chapter. Henry VII. under whose authority America was discovered, did not perform the task; he left it to his successors. But whether they have, in their grants, confined themselves to the bounds prescribed by the fundamental laws of the State, which are the only proper tests by which the lawfulness or illegality of the royal conduct must be decided in all cases whatever, are questions of which the future safety of the British Empire seems to demand an immediate discussion.

To do this with candour, and to tread with caution in a path which has been almost unexplored, it will be necessary to take a view of the principles contained in the several proclamations and charters, under which the inferior societies in America have been settled, and by comparing them with the fundamental laws of the State, to determine whether they are lawful or not.

And although not first in time, yet because first in order, we will here consider the structure

E

of

of the Governments called Royal. These have been formed by royal proclamations, on principles, which, though not so repugnant to the fundamental laws of the State as the proprietary and charter governments, yet are not calculated to support the prerogatives of the Crown, nor the aristocratic influence of the British Constitution, nor do they by any means harmonise with the system to which they belong.

Upon a first view of these Governments, one would imagine, that they were intended by the politicians who formed them, to contain the several political checks, and that balance of power which is so essential and beneficial in the principal society; to carry the same policy down from the State to its inferior politic members; and to make the several branches of their legislature, as they ought to be, perfect representations of those of the State. But upon more intimate examination, we shall find, that the royal and aristocratical branches are little more than faint resemblances, the rights of which are uncertain, and their powers and influence in the society enfeebled in the modification of their establishments; while the
demo-

democ atical assemblies have possessed all the rights, powers, and privileges, of the House of Commons, to as great an extent, within the colony, as the House of Commons itself within the realm.

Under the Royal Proclamations, there is a Governor appointed by the Crown, who holds his commission during its pleasure. This officer was certainly intended to be a perfect representative of the Monarch; and to support the same proportion of weight and influence in the inferior society, as the King does in the State; and therefore he ought, like his royal Master, to be one of the checks in the inferior constitution against an excess of the aristocratic, but principally of the democratic influence, and consequently independent of the other orders. And yet this officer is a perfect dependent for his support, not on his royal Master, whose power and influence he is intended to preserve, but on the people, whose licentiousness he is appointed to check. In some of the Colonies, his salary is unsettled, and in others incompetent to the support of his rank and dignity; and therefore

he is dependent on his Assembly, in a matter which must, human nature considered, bias his judgment, and weaken, if not totally destroy, his just influence.

There is also a council, or middle order of the inferior legislature, appointed under those proclamations, but very dissimilar to the aristocratic order of the British constitution. The members are taken from the common rank of people, there being no other. They are invested with no dignity, nor any thing else, to raise them above that rank, or to give them weight or respect in the society. They have a temporary commission, which may be suspended at the pleasure of a Governor, and revoked at the pleasure of the Crown. Thus, this branch of the colonial legislatures has not that dignity, independence, and influence, which is necessary to check the illegal attempts of an arbitrary governor, or the ambitious and licentious designs of a popular assembly; both of which are absolutely necessary in a mixed monarchy, to preserve the peace and harmony of the inferior Government. For, as a friend to truth and my country, I must say, that former administrations

tions have appointed Governors, whose ignorance and arbitrary dispositions have wantonly sported with the rights of the people, and greatly diminished their allegiance to their Sovereign. But when I say this, I must declare that instances of this kind have been but rare, when compared with those where the licentiousness of the popular assemblies has attempted to invade the rights of the State. Thus the aristocratic balance, which constitutes the strength and excellence of the British Government, is wanting in these inferior societies, while the principles of monarchy weakly, and democracy firmly, established, remain most injudiciously mixed, and opposed to each other. The consequence of which is, that these two opposite principles are often at variance, and one of them, to increase its own power, frequently invades the rights of its antagonists with success; there being no indifferent and disinterested influence to accommodate the difference, and check their illegal designs.

But it much oftener happens, as I have already hinted, that the rights of the Crown are invaded by the people, than those of the people by the Governor. The latter, too

often more indifferent about the rights of the Crown than his annual support, when it depends on the pleasure of his assembly, is generally cautious of inroaching on their privileges. And he is so far from extending the prerogative beyond its just limits, that many instances may be produced, in which he has sacrificed it to gratify the licentious designs of the popular assembly. But, on the other hand, the assemblies, who are ever watchful over what they conceive to be the rights of the people, and ever ambitious to extend their own powers, seldom miss an opportunity of wresting from a Governor the prerogatives of the Crown, and of increasing their own weight in the scales of government. In these attempts, they have been in a variety of instances but too successful. Indeed, it is not to be reasonably expected, that a Governor thus dependent on the people, and on a council so truly insignificant, and of the same rank with them, will hesitate, at times, to sacrifice even the rights of royalty to republican ambition,

But should every Governor possess a fixed and durable salary, he would be more attentive to his duty, and more firm
in

in his opposition to popular claims ; because he would be altogether independent on the people, and only dependent on and accountable to the Crown, as he ought to be in all reason, and according to that policy upon which the British State is founded.

A Council consisting of men raised to a degree of dignity, independent, and durable, so as clearly to distinguish their rank in the society above the common people, would see and feel it to be their invariable interest, constantly to preserve a just balance between the excess of power in either of the other orders of the society, to oppose at all times, as well the licentious attempts of assemblies, as the immoderate exercise of the prerogative in Governors, and to preserve the just rights of both from violation ; because their rank, dignity, and weight, must depend on their preserving this balance. For as they would form the aristocratic part of the society, a prevalence of democratical power beyond its bounds would be equally dangerous to their rights and influence, as to those of the Crown. Being in the same predicament, and liable to the same enemy, they would

unite with the Governor in opposing it, and maintain the same balance in the inferior society, as is maintained in the State. Thus the prerogatives of the Crown would possess that security which they have in the principal society, and of which they have ever been too long destitute in those inferior politic bodies. The provincial governments thus constituted, would, as they ought, contain their own checks and balance; discords, dangerous to their internal peace, would be excluded; harmony would be preserved; and much trouble saved to those who immediately superintend them.

By these amendments in the Royal Governments, they would be made to harmonise with the principal system. Their polity would be the same, which would consequently produce the same kind of laws, manners, and habits; the same principles, opinions, and attachments in the people, in respect to the excellence of the principal government; and as their honours, dignities, and offices, and their protection and happiness, would all flow from the sovereign authority of the Parent State, they would soon be compelled

pelled by the force of education, which is little short of the instruction of nature, to love and revere the polity of the State itself. The national attachment in England and in America would be the same. Britons and Americans would have but one object, and be led by education to look up to one common sovereign for that security, and those blessings, which they expect to receive from civil society. Here inclination and duty, enforced by their own interest, will lead them to unite, on all occasions, to maintain and defend the State. Thus these inferior members of the politic, like those of the natural body, when perfectly formed on their true principles, will harmonise with the principal system, support and strengthen it.

But should the Royal Governments be continued on their present defective plan, it must be absurd to expect, that what has so often happened will not happen again. The same causes subsisting, we must look for the same effects. The rights of the Crown and State will continue to be impaired by the neglect, want of firmness, or the private interests

terests of Governors, having no independent aristocratic principle to support them, or to prevent their yielding to the licentious claims of the people. Laws and principles yet more dissonant from those of the British Constitution will take place, and of course, manners, habits, opinions, and attachments; until all true judgment of, and all affection and respect for, the excellence of a mixed form of government, are effaced by the over-prevalent principles of democracy. And whenever this shall happen, it is easy to perceive that the consequence must be a total separation of the two countries.

Considering these defects in the Royal Governments, and the mischiefs which must naturally attend them, it is not unreasonable to expect, that they will become very soon the objects of the serious attention of those to whom the welfare and safety of the State are committed. The remedy is obvious, and the mouth of the patient is open to receive it. This will admit of the most evident demonstration, if the general sense of the people of the Colonies, declared in the
first

first Congress, may be deemed such demonstration;—a Congress very different from those which followed it. It was composed of many men of the first abilities and independent fortunes, who knew the sense and wishes of the people. In this Congress, it was

“ Resolved, N. C. D. 10. It is indispensablely necessary to good government, and rendered essential by the English Constitution, that *the constituent branches of the Legislature be independent of each other*; that, therefore, the exercise of legislative power in several Colonies, by a Council appointed, during pleasure, by the Crown, is unconstitutional, dangerous, and destructive to the freedom of legislation.”

Here, not only the mischiefs I have pointed out in the Royal Governments, but the amendments proposed, are declared to be necessary to the freedom of legislation, and rendered essential, by the fundamental laws of the English constitution, to the good government of the Colonies by the Americans themselves. And a little consideration will convince

vince us, that they are equally essential to the preservation of the rights of the Crown, to the conformity and harmony which ought, in reason and sound policy, to subsist between the State and its members, and of consequence to the general peace and safety of the Empire.

'This truth stands further confirmed by daily experience, which has, long since, taught us, that those inferior societies and corporations in Britain, as well as in America, which have been formed on principles the most variant from the essential polity of the State, have ever been the most ungovernable and licentious, and too often the scene of groundless discontent, faction, and tumult. In America, we know, that the internal peace and order of the Royal Governments have been better preserved, and their public affairs have been more easily transacted, with much fewer contests and obstructions to the public weal, than in either the proprietary or popular governments. Indeed, it is a fact which greatly confirms the argument, that the present rebellion arose, and first broke out, in the popular governments of New England. Penn-
sylvania

sylvania next caught the infection, Maryland followed, and the Royal Governments, in general, were the last who embraced the treason. In Britain, we have long and often seen those corporations, whose constitutions have been formed on democratical principles, and where popular influence has prevailed, filled with disorder and tumult; and of late, they have aimed at nothing less, than to make those alterations in the State which would reduce it to their own principles, destroy the balance of its powers, and throw it into democratical anarchy. Let us suppose, that the corporations of London and Bristol had been established on the true principles of the mixed monarchy of Britain; that they had contained the same checks and balance of power, which are settled in the State; that, instead of the chief Magistrate being appointed by the Aldermen and Common Council, he had been appointed by the Crown, and held his office during pleasure; and that the Aldermen had been also appointed by the same authority during good behaviour; is there a person of the least reflection, who can believe, that we should have seen, within these corporations, that licentious spirit, that
factious

factionous opposition to the reasonable measures of Government, that support of, and combination with rebellion, which have too long perplexed the councils of the State? It is impossible in the nature of things. The Mayor being independent of the people, and accountable to the Crown, would naturally, on all proper occasions, have supported its weight and authority within the inferior society; and the Aldermen also independent of the Common Council, would have thrown their influence into the monarchical scale, as the only means of securing their own independence and dignity, against the late republican and licentious spirit of the Common Council. The city of London would have been in perfect tranquillity and safety at the time of the late dreadful riots and conflagration, when every worthy inhabitant, even those that had been deluded by the faction, thought their final ruin inevitable.

C H A P. VI.

*Of the abrogated or obsolete Charters granted
for the Settlement of America.*

IT is not my design to travel minutely into the motives which induced the Sovereign to grant, or the people to accept of, the American charters. My principal view is to examine their polity, to show their disagreement with the fundamental laws and safety of the Empire, and to enquire whether our Kings possessed a right, under the established constitution, to grant charters, in the manner, and on the principles, upon which they have been granted.

In this enquiry, whether we consider those charters which have been resumed by the Crown, or those that remained in force until destroyed and forfeited by the rebellion; it will appear from their own evidence, that all of them were so many acts inconsistent with the fundamental laws upon which the British government is established; that their princi-

ciples conduced to render the people who should settle under them, aliens in affection, and enemies from principle to the State of which they were subjects; and instead of strengthening and supporting the mixed monarchy, they, by gradual and infallible means, tended to weaken and destroy its essential establishments.

I shall pass over, in silence, the Charters granted by Elizabeth †, as no settlement was made under them, and proceed to those granted by James the First to the Virginia companies. The first was granted in the year 1606, to Sir Thomas Gates, and his associates. The territory conveyed, extended from the 34th to the 45th degree of northern latitude, including, what is now called, the Provinces of New Hampshire, Massachusset's, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the Delaware counties, Maryland, Virginia, and North Carolina. This extensive country was divided into two districts, to be settled by different companies of adventurers, and to be

† To Sir Humphry Gilbert in 1578, and to Sir Walter Raleigh in 1585.

governed

governed by the same general principles of polity. For the government of the people, James reserved a power to appoint one executive council in and for each province; another to be resident in England, for the superior management of both, but all under his direction, and liable to be removed by the royal pleasure. The absolute legislative authority was vested in the King and his successors. For, in the words of the charter, these councils were to "govern
" and order *all matters and causes* which
" should arise, grow, or happen to or with-
" in the same several colonies, according to
" *such laws, ordinances, and instructions*, as
" should be in that behalf given and signed
" *with our hand*, or sign manual, and pass
" under the *privy seal* of the realm of Eng-
" land."

The second of these charters was also granted by James the First, in the year 1609, to Robert Earl of Salisbury, and others. It expressly superseded all the powers of government conferred by the first, and was founded in principles in the opposite extreme, and equally inconsistent with the order, fundamental laws, and safety of the State. By this
F charter,

charter, the company named in it, and
 “such, and so many, as they should admit
 “into their society, whether they settled in
 “the colony,” or “adventured their money,
 “goods, or chattels,” were formed into a
 body politic by the name of “The Treasurer
 “and Company of Adventurers and Planters
 “of the City of London, for the first Colony
 “of Virginia.” For the government of the
 colony, or of this body politic, a council and
 treasurer, to be resident in England, were
 named and appointed in the charter. But it
 was declared, that “the said council and
 “treasurer, or any of them, should be after-
 “wards nominated, chosen, continued, dis-
 “placed, changed, altered, and supplied, as
 “death, or other several occasions should re-
 “quire, out of the company of the said
 “*adventurers*, by the voice of the *greater*
 “*part of the said company and adventurers*,
 “in their assembly for that purpose.” And
 to this council, thus, from time to time, to
 be constituted, were granted “full power and
 “authority to nominate, constitute, ordain,
 “and confirm, by such name and names,
 “style or styles, all and singular the Gover-
 “nors, Officers, and Ministers, which should
 “be

“ be by them thought fit and needful to be
“ made and used for the government of the
“ colony or plantation.”—“ And also, to
“ make, ordain, and establish, all manner of
“ orders, laws, directions, instructions, forms,
“ and ceremonies of government and magis-
“ tracy, fit and necessary for and concern-
“ ing the government of the said colony or
“ plantation.”

By the third American charter, granted by James the First, in 1612, all the islands situate in the ocean, within 300 leagues of the coasts of the first colony in Virginia, were granted to the Treasurer and Company, and the same system of polity established in them. And it further contained a confirmation of former privileges, with this extraordinary clause,
“ any statute, act, ordinance, provision, pro-
“ clamation, or restraint, to the contrary
“ thereof, heretofore made, ordained, or
“ provided in any wise notwithstanding †.”

† Such was the incompetent and confused government under these charters, that a writ of *Quo warranto* was issued, and judgment, declaring them void, was given by the court of King's Bench, in Trinity-term, 1624.

The fourth American charter, commonly called the Grand Plymouth Patent, was granted by Charles the First, in the year 1628. (This charter included the territory granted to the second Virginia colony.) The Grantees were vested with power to make free of their society, such persons as " they should think " fit." They were authorised " to chuse " annually, their governor, deputy governor, and assistants, out of the persons so " denizenized." On this politic body was conferred all the legislative and executive rights and powers necessary to a complete independent society. Or, in the words of the charter, they were empowered " to make " laws and ordinances for the good and welfare of the company, and for the government of the lands and plantations, and the " people inhabiting, and to inhabit the same, " as to them, from time to time, should be " thought meet ; and to settle the forms and " ceremonies of government and magistracy, " and to name and style all sorts of officers, " both superior and inferior, distinguishing " and setting forth the several duties, powers, " and limits, of every such office, and the " forms of the oaths to be respectively " ministered

“ ministered unto them, and to dispose and
“ order the election of all such officers †.”

When we examine these charters by the laws which conferred the power on James and Charles to establish inferior societies, it is difficult to determine which of those Princes acted most inconsistently with his trust, It was certainly their duty, as the politic guardians of the British State, vested with extraordinary prerogatives for preserving its uniformity, and the relation and subordination of its different members, to establish the inferior societies on principles which accorded with the general polity of the State, and were directed by its fundamental laws. To have acted within the powers, and consistent with the spirit of those laws, they should have established the prerogative by the same rules, and in the same manner, as it is settled in the principal constitution. Their legislative powers should have been founded in the same mixed polity, *i. e.* with the same kind of checks and balance of

† Upon a writ of *Quo warranto*, issued against this charter, judgment was given for the King in the High Court of Chancery, in Trinity-Term 1684.

power, in a subordinate degree, which they saw, were the basis and strength of the principal government. And above all, because most necessary to the unity and uniformity of the society, the supreme direction of the Parliament should have been preserved in as perfect right and vigour as in any other part of its dominions. This was not only necessary to that harmony, which ought ever to subsist between the State and its members, but to their subordination and obedience to its supreme authority.

But how different are the facts! By the first recited charter, James considered America, contrary to all law and equity, as his private patrimony; and concluded, that he had right, independent of his political trusts and relation to the State, to govern it by what laws and prerogatives he pleased. From this mistaken idea, he established within the dominions of the State, ten times more extensive than Great Britain itself, an absolute monarchy, constituting himself, and his heirs, the absolute and perpetual monarchs. And in doing this, he totally disregarded every law upon which the executive, as well

as legislative rights, were constituted. He assumed to himself, and his heirs, a complete and independent legislative sovereignty, and governed the people by ordinances made by himself; and thus, most effectually, excluded all the rights and powers of the King, Lords, and Commons, of the British State, over their own dominions. His executive councils resembled more the inferior powers of an aristocracy, than those over which he presided, and by which he governed. By all which, he effaced every principle, every trace of that mixed polity, which is the great support of the rights of Englishmen, and the essence of their government. But more: Altogether indifferent to the welfare and safety of the kingdom over which he rightfully presided, in order to populate the country and strengthen his arbitrary system of government, he gave a general licence to British subjects to abandon their allegiance, and emigrate to his new dominions,

It would be more tedious than entertaining, were I to point out, in detail, all the mischiefs which must have naturally flowed from this charter, had it continued in force, and

America been settled under it. I shall, therefore, only mention them in general. Long ere this time, the Americans, educated in the principles of monarchy, would have lost all opinion of the excellence of the British Government, and all their respect and attachments would have been solely devoted to monarchy. Their laws, habits, manners, customs, and ideas of government, would have been dissimilar, and *inimical* to those of Great Britain. A monarchy, tempered by the principles of aristocracy and democracy, would have been as much an object of their aversion as of that of a Spaniard or a Turk. They would now only have had a respect for, and attachment to, a monarch residing in Britain, from whom they would have daily received their public benefits and protection, and to whose will and pleasure they would have been consequently devoted. They would have understood little, if any, of the happiness and perfection of liberty enjoyed by British subjects, under a British Government.

Our Sovereign, to whose integrity and public virtue, if I may judge from the whole
tenor

tenor of his conduct, I firmly believe this monarchical power might be as safely intrusted as to any Sovereign in the world, would, at this moment, have possessed a distinct, independent, and absolute dominion over three millions of people, the rightful subjects of the State, and over a tract of country annexed to, and a part of, the realm, many times larger than Great Britain itself. The revenues of that country would have been perfectly at his command. A separate Exchequer from that of the State, and over which it could have no controul, would have been established and filled with the treasure arising from the commerce, and other resources of a country, whose exports were, lately, nearly equal in value to those of the foreign exports of Great Britain. To what uses and purposes this absolute and independent dominion might have been applied, in the hands of a Sovereign of less integrity, and less regardful of the fundamental laws of the State, and the liberties of his people, than his present Majesty, I imagine need not be explained. Every man of sense, but more especially that restless opposition, who have been long incessantly exclaiming against the
exercise

exercise of the established and constitutional rights of the Crown, will readily perceive them.

By the three subsequent charters, James and Charles transgressed the bounds of their authority, in a degree as extravagant as in the first. For, if James instituted the principles of an independent monarchy in the first, he and his successor established in the others those of perfect democracies; all of them equally subversive of the mixed monarchy which their trusts obliged them to maintain. For, if the introduction of the principles of absolute monarchy, within a part of the realm, would destroy the respect and attachments in the subject to a mixed form of government, and throw too much power into the scale of the monarch; it is evident to common sense, that the establishment of a number of democracies would have thrown as much influence into the hands of the people, destroyed that balance and check against their natural and licentious dispositions, effaced all respect for, and attachment to, the mixed form of government, and, in the end, would have destroyed it.

It

It cannot be difficult to perceive, in the three last-mentioned charters, the dawn of that republican spirit which has so often disturbed the pure streams of a mixed monarchy, throughout all the parts of the empire, and been productive of so many national evils. The disposition of James to convert the British Government into an absolute monarchy, is evident from the first charter, as well as from a variety of his other public transactions. The inclination of Charles to effect the same design, is equally evident from many parts of his conduct. The subsequent charters could not, therefore, be the charters of the royal judgment. Yet we are not at a loss, having the history of those Princes before us, to account for acts so extraordinary, and so repugnant to their main design. Both of them intending to enfeeble, and perhaps to dissolve, the second and third orders of the State, could not procure the money necessary to the accomplishment of their design, but by the prerogative. And this method being unlawful, and unpopular, it was opposed. It is not, therefore, an improbable conjecture, that these democratical charters were commodities purchased; that the last was bought, we have
proof,

proof, as positive as the nature and antiquity of the transactions will admit of †. Besides, these Princes had their moments of embarrassments in which they were off their guard, and lost sight of their principal design. Art and influence might, at these times, get the better of their judgment. And we may perceive, not only from the history of those Princes, but from their charters themselves, an enthusiasm for colonization equal to that which produced the Croisade. This enthusiasm, it is more than probable, added to the other motives I have mentioned, and to a hope that these charters would be always controulable, and liable to be superseded by the prerogative, led James and Charles to gratify the republican spirit of the persons soliciting for them. Several attempts were made to resume these charters, and at length Charles succeeded in the year 1684.

That Kings, possessed with high notions of absolute power, should, of their own mere motion, grant charters so inconsistent with them, is not to be supposed. Nor is it with-

† See Hutchinson's History of the Massachusetts Bay, vol. ii. p. 1.

in the confines of reasonable conjecture, that men would accept of patents for carrying into execution an enterprize so hazardous, uncertain, and expensive, as that of settling a colony, unless the powers and privileges conferred, had strictly accorded with their own ideas and principles of civil government.

What those principles were, we cannot be at a loss to know, when we have recourse to the history of the patentees of the last-recited charter. They were chiefly men of republican principles, haters of monarchy, and perfectly attached to democratical government; ideas altogether unknown in Britain before the Reformation, and which were produced by the too rigid rules and restrictions established by it, for the direction and government of the consciences of men. These rules produced a persecution against those who dissented from the church established, and that persecution begat an aversion to the principles of the government which imposed it. Besides, the government which these Dissenters, whether called Puritans, Independents, Separatists, or Presbyterians, adopted for their respective churches, and made a part of their religion,

was

was altogether democratical, and excluded every principle of monarchy and aristocracy, knowing no temporal head but the people of their own churches. From all which, and a view of what has passed since the Reformation, we have documents which clearly prove, that these charters were founded in that republican spirit which arose in Britain, immediately after the Reformation, and produced the usurpation of Cromwell; and which being checked and subdued by the tyranny and oppression of that usurper, made way for the Restoration; and I wish I could not, with equal truth, add, in that republican spirit, which, under the liberal principles of the present established government, has been gradually nursed, and imperceptibly gathering strength, until it has produced a rebellion in America, created a disaffection in the minds of too many Britons to their most excellent form of government, and threatens, unless restrained by proper laws, in much less time than that of half a century to destroy it.

Those who will look back on what they have lately seen and felt, cannot want evidence

dence to convince them of this truth. For although, upon a candid examination of the present state of the British Government, the fundamental laws of the society were never more strictly, if so perfectly, adhered-to and preserved, yet ill-founded clamours against its administration subsist. Although the streams of justice flow purely and unfullied, and every individual has his remedy for every right invaded, for every wrong sustained, yet much restless discontent prevails. And although there is truly less real oppression within the dominions of Britain, than in any other society upon earth, yet we have seen that restless republican spirit, unoppressed, and in the possession of every blessing, forming in America seditious committees, conventions, and congresses, abolishing every system of colonial government, and breaking-out into open rebellion against the State to which they owe their existence and happiness; and in Britain, in strict and uniform concert with America, we daily see it establishing seditious associations, with a professed intent of making alterations in the Government, under the insidious pretence of amending it, but truly, with a
secret

secret design to overturn the long-established constitution of our ancestors.

Had the first Virginia charter continued in force to this day, how different would have been the language of the republicans from that which they have lately held in support of the American democratical charters ! We should be told by them, that a society, instituted on monarchical principles, within the territory of the State, was fundamentally subversive of our mixed form of Government ; that it tended to throw an undue weight into the hands of the Crown, and to enable it to destroy the aristocratical and democratical checks and balance essential in the British constitution ; and that, therefore, no King could possess a power to establish it, and consequently it must be void. That this would have been their language, we may justly conclude from their incessant exertions to wrest from the Crown, even many of its rightful and legal prerogatives.

But had the second and third of these charters been continued in force, they could not in Britain have wanted advocates. Their demo-

democratical principles must have recommended them to the republican zealots of the present day. For, although they equally tend to destroy the monarchical and aristocratical orders of the State, and to subvert the foundations of the British Constitution, as in the other instance; and although the Crown, in the grants of them, has, to as dangerous a degree, exceeded the bounds of its authority; yet we have the strongest evidence to induce us to believe, had an attempt been made by Parliament to reduce them to a consistency with the State, that the republican faction would have been the zealous opposers of the amendment.

I do not assert this from a mistaken conclusion. We have seen the same republican spirit, contrary to the fundamental principles of the society of which they are members, and to whose State they have repeatedly sworn allegiance, clamouring against, and reprobating that very amendment. When an act of Parliament was made to give the Crown the appointment of a Lieutenant Governor of the Massachusetts Bay, and to take that appointment from the people, the whole faction rose as one man, and united in the opposition,

G

position. Charters, however inconsistent with the fundamental laws of the State, however independent of its authority, and dangerous to its existence, were now become acts so sacred in their nature, that, like the laws of the Medes and Persians, they were not to be altered or amended, even by the Parliament itself.

C H A P. VII.

Of the Charter of Maryland.

WE have seen, in the preceding chapter, the strange inconsistency of the first American charters with the laws of the State, the rights of the Crown, and with each other. In prosecution of my design, I shall proceed to review those which have been since granted, and were in force at the commencement of the present rebellion. The first in order of time is that to Cecilius, Lord Baron of Baltimore, in the year 1632, for the province of Maryland.

By this Charter, Charles the First formed the territory into a principality, and created and constituted his Lordship, and his heirs, "the *true and absolute* proprietaries of the "country." The title thus conferred, is so descriptive of sovereign powers, that if they were not in the following clauses of the charter more explicitly granted, they might be justly inferred from it. But the charter did

not confer the title only. It granted all the rights and powers which were ever exercised by, or can possibly be necessary to, a sovereign State. The description of those rights and powers is so general and unlimited, and the estate or tenure granted in them so indefinite and absolute, that they at once destroy the political relation which ought ever to subsist between the State and its members. Charles did not even reserve to the Crown a single prerogative, nor to the Parliament the least right of supremacy. All the rights and powers of the British Government, as well those which were possessed only in trust by Charles, as those which were held by the King, Lords, and Commons, independently of his executive authority, were transferred in alienable and absolute inheritance.

In every civil society, whatever be its form, there are, as I have before observed, certain principles peculiar to its structure, which create the relation that all its different members must of necessity bear to the State. This relation is formed by, and consists in the establishment of a supreme authority over the members, and in their obedience to it.

These

These qualities of supremacy and obedience form that cement of union which binds the members of every society together, create their subordination and subjection, lead them to act in concert, on all occasions, for the common weal, and constitute the strength and harmony of the society; and without them, we could never form an idea of Government. Should these relations between the sovereign power and the subordinate members be universally dissolved, the society is no more; should they partially, or in regard to a part of the members, be broken, the strength of the society must be diminished in proportion.

The same property cannot be possessed in absolute right by two different persons, nor can the same specific powers of Government rightfully exist in two different politic bodies of the same society. Every absolute right implies the absolute use and exercise of it; and therefore, whatever were the powers and privileges which Charles granted to Lord Baltimore, and his heirs, he deprived himself and his successors for ever of the use and exercise of, and of all right of interference in, them. Let us then enquire what were the executive rights and preroga-



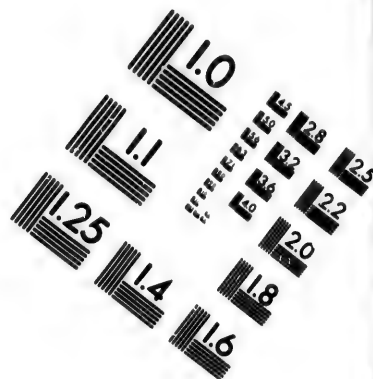
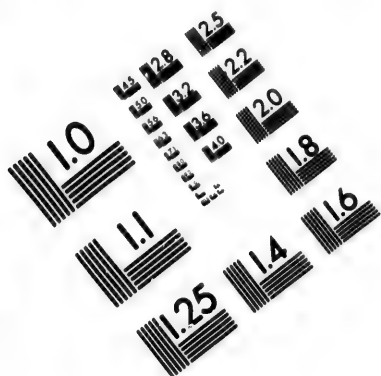
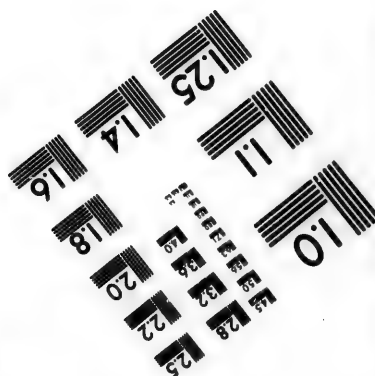
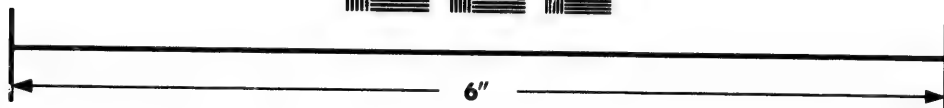
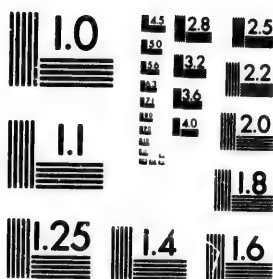


IMAGE EVALUATION TEST TARGET (MT-3)



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0
5.6
6.3
7.1
8.0
9.0
10.0
11.2
12.5
14.0
16.0
18.0
20.0
22.5
25.0
28.0
31.5
36.0
40.0
45.0
50.0
56.0
63.0
71.0
80.0
90.0
100.0

10
01

tives granted by the words of the Charter of Maryland, in absolute right and tenure.

His Lordship and his heirs are empowered “to appoint and establish any Judges, Justices, Magistrates, and officers *whatsoever*, by *sea and land*, for *what causes whatsoever*, and with *what power soever*, and *in such form* as to them shall seem most convenient. To do all and every thing, or things, which, unto the complete establishment of justice, unto courts, prætories, and tribunals, forms of judicature, and manners of proceedings do belong.”—They were constituted Captain-Generals, with all the powers of war and peace, and to declare martial law. They were authorised “to confer favours, rewards, and honours, upon the inhabitants, and to invest them with *what titles and dignities soever*, so as that they should not be such as are *used in England* ;”—and “to incorporate towns into boroughs, and boroughs into cities, with such convenient immunities and privileges as to them should seem meet ;”—to constitute “ports with such rights, jurisdictions, and privileges, as to them should
“ seem

“ seem expedient ; and to have and enjoy for
“ ever the customs and subsidies in the said
“ ports.”

Such are the rights and prerogatives of the executive authority of the State granted by this charter. Were there no other objections to the legality of them, than the unlimited and indefeazable estate in which they are granted, this alone would certainly, upon every principle of politic law, render them void. But, independent of this, the following reasons, founded in the fundamental laws of the British State, may be justly urged against their validity.

1. The King, by the original decrees of the society, is constituted the supreme Magistrate, bound to superintend the administration of justice, and the preservation of the public peace. For that reason, he is impowered to judge of the abilities and integrity of the persons proper to execute trusts so important to the rights and harmony of the society. He cannot, therefore, consistently with the nature of his trust, give up his right of superintending the appointment of judges and conserva-

tors of the peace, much less can he transfer it to another for ever ; for this would be to give up his right of judgment in a matter which the constitution has intrusted solely to him, to weaken his necessary weight and influence in the society, and to deprive himself of the power of superintending its public peace. Should a King, by his patent, delegate a power to another of appointing the Judges of the King's Bench, Common Pleas, and of the Justices of the Peace within Great Britain, can it be a doubt but that the grant would be illegal, mischievous and void ?

2. The King, by the prerogative, is empowered to constitute all the subordinate offices necessary to the administration of justice, and the preservation of the peace ; but in discharging this part of his trust, as in every other, he is bound to observe the fundamental and general laws of the society, and to appoint those offices in the manner and form by them prescribed. He cannot, therefore, constitute them with powers and rights variant from those laws ; much less can he, as he has done in this charter, grant an unlimited and indefinite power to another, and his heirs for
5 ever,

ever, to constitute them, “ *for what causes soever, with what powers soever, and in such form, as to him or them shall seem most convenient ;*” because, under powers so extensive, all the subordinate offices in the society might be established on principles repugnant to the spirit and policy of the government ; and the uniformity of its inferior orders, which greatly contribute to the strength and support of the State, might be broken.

3. The King is vested with that power from whence the society has a right to expect protection and security. To enable him to secure that protection, he holds the fœderative rights, and all the powers of war and peace ; the appointment and supreme command of the military force of the nation ; the custody and care of all castles, fortifications, and other places of strength. Were he authorised to grant these rights to another, he might deprive himself and his successors of their superintending power and charge over the society, in a point most essential to its safety and existence.

4. The

4. The King is the fountain of honour; and as he superintends the punishment of the wicked, so he is the supreme judge appointed to reward the virtuous and the brave. He may, therefore, confer titles of nobility on whom he may think deserving; but the grant must be made, in mode and substance, conformable to the established rules and fundamental laws of the society. He cannot, therefore, confer titles and dignities unknown to those laws; and much less can he grant a power to another, in fee, to confer them, with an express prohibitory proviso, that they shall "not be such as are used in England."

5. The King may, by virtue of his prerogative, constitute inferior societies, such as towns, boroughs, and cities, &c. with rights, jurisdictions, and privileges, corresponding with the structure of the principal government and its fundamental laws, preserving their due relation to the other members, and their subordination to the supreme authority of the State; but he cannot constitute them with independent rights, powers, and jurisdictions, because this would dissolve their relation and connection with the society, and
render

render them independent States : And much less could he transfer to Lord Baltimore, and his heirs for ever, an indefinite power to constitute them with such rights, jurisdictions, liberties, and privileges, “ as to them should “ seem convenient.”

6. The prerogatives of the Crown are rights vested in the person of the King, *in trust*, to exercise them himself, and to leave them unimpaired to the exercise and use of his successors, for the public good and safety ; he cannot, therefore, transfer them either *for life, in tail, or in fee* ; because, in the first case, he deprives himself of the power to discharge his trust and duty to the society, and in the others, he robs his successors of most important rights vested in them by the constitution, for the public good and safety ; and because, if he might do this, he might alter the succession of the Crown, and give to the people what King he pleased. And yet Charles, by the express words of this charter, has conveyed an absolute estate in all the civil, military, and fœderative rights of the Crown, to the proprietary of Maryland, and his heirs. So that, supposing the charter to be valid in law,

law, he has deprived his successors for ever of their right to exercise the prerogatives of the Crown, and of interfering, in any respect, in the government of Maryland, though a part of their dominions.

Many other objections may be justly made to this part of the charter, but these are so strong and important as to render the mention of others unnecessary; we will therefore pass to a view of the legislative powers. And here we ought not to be surpris'd, that Charles, who did not hesitate to alien *for ever* those rights which were necessary to his own dignity and power, should, with less regret, transfer those of the Parliament, which he was endeavouring to weaken, if not to destroy, in the same independent and unlimited tenure. The words of this illegal and extravagant grant are, " We, reposing
 " special trust, &c. in the said now Lord
 " Baltimore, for *us, our heirs, and successors,*
 " do grant FREE, FULL, and ABSOLUTE
 " POWER, by virtue of these presents, to *him*
 " and *his heirs,* for the good and happy go-
 " vernment of the said country, to ordain,
 " make, enact, and under his and their seals
 " to

“ to publish, *any laws whatsoever*, appertain-
“ ing either to the *public state* of the said pro-
“ vince, or unto the utility of particular per-
“ sons, *according to their best discretions*, by
“ and with the advice, assent, and approba-
“ tion, of the freemen of the said province,
“ or the greater part of them, or of their de-
“ legates, or deputies, whom, for the enact-
“ ing the said laws, we will, that the said
“ now Lord Baltimore, and his heirs, shall
“ assemble *in such sort and form* as to him and
“ them *shall seem best*, and the said laws duly
“ *to execute* upon all people within the said
“ province and limits thereof, by imposition
“ of penalties, imprisonment, or any other
“ punishment, yea, by taking away *members*
“ *or life.*”

No truth can be more firmly established
by the practice of mankind, and the nature
and fitness of things, than that there must of
necessity be, in every civil society, one su-
preme will or sovereign power; a power
having a right to command and direct the
actions of every member to whatever is ca-
pable of human direction, and relates to the
public interest, safety, and happiness. It is
from

from this universal power of directing and commanding, that the union of the wills and strength of all the members arises, and the "body politic or state results." The members cannot possess an absolute and independent right to regulate or direct their own conduct, in matters where the public good is concerned, because their dependence on the supreme authority for what relates to their safety and happiness, constitutes their membership, and unites them with the society. This supremacy in the state, and dependence in the members, are so essential, that without them "we could never conceive a civil society." For, if it could be lawful for the members of a society to direct their own actions, independently of the sovereign will, and at their pleasure to disobey and oppose it, every one would follow its own judgment in whatever relates to the public welfare. The cement which binds the society together would be dissolved, endless competition and contests for power would ensue, with all the mischiefs incident to a state of nature.

A necessary consequence of this supremacy is, that all the members must bear a proper relation

relation and subordination to the State, and a perfect subjection to its will. By their relation and subordination I mean, that their rights and powers must be founded in principles which correspond with those of the State, and not in such as are dissonant and heterogeneous. For, without this, the communications of the supreme authority could be neither regularly made or received, by its members, nor the power of the one be executed, nor the duties of the other fulfilled.

All these fundamental and well established truths, Charles, in the constitution of the province of Maryland, totally disregarded. Instead of ascertaining the form of this inferior politic member, and founding it on principles which agreed with those of the State, and its subordination, its form and powers are totally undefined; and the Lord proprietary, and his heirs, are authorised to establish it "in such form and form as to them shall seem best." Under this unlimited authority, his Lordship might have established it on principles entirely aristocratical, or, as has been done in the eastern Colonies, to the inconceivable detri-

ment of the Empire, on principles purely democratical: and he wanted nothing but the assent of the people to make it absolutely monarchical.

In every Government whose rights are settled, and even in the British (whose principles, before the Revolution, were fluctuating), we find the powers and privileges of all the inferior politic bodies restrained so to the particular objects of their institutions, as to render the powers and interference of the supreme legislature perpetually necessary to their interest, safety, and happiness, ever having something to ask of, and to receive from it, to which they are incompetent. Their powers do not, ought not, and cannot, extend to objects of general police and regulation, while they remain subordinate members of the society, and subject to its legislature; Because their subjection consists in this dependence on it; and because, if they were not thus restrained, but made competent to the making all manner of laws, their legislative acts would ever interfere with those of the supreme authority, weaken its powers,

powers, and produce the utmost anarchy and confusion.

Now the powers of legislation, granted to the Lord Proprietary and his heirs, were as extensive as language could make them. They are in their tenure unlimited, and in their nature "free, full, and absolute." Nothing is wanting that can be necessary to an independent sovereignty. They extend to the regulation and direction of whatever "appertains to the private utility of individuals," or "to the public state of the province, and to the good and happy government of the country." Thus the people of Maryland are left, by the express words of their grant, under a necessity of looking up to Parliament for, or asking of it, no one act, matter, or thing, which can be necessary either to their internal peace and happiness, or to their protection against a foreign enemy, as soon as their opulence and population shall enable them to protect themselves.

Where then shall we find that subordination, or those political ties which ought to
H bind.

the politic body of Maryland to that of the State, so as to enable us to call it, with any degree of propriety, a member or part of the same society? They are not to be found in the constitution of the legislative powers, for these are indefinite, absolute, and independent: Nor in that of the executive powers, for the Proprietary possesses them in absolute right and property, and can be no more accountable to the Crown for the use and exercise of them than he is for the money in his purse. Shall we look for them in the establishments of the inferior orders, boards, or offices, whether judicial or ministerial, ecclesiastical, civil, or military? They are not there; for these are the creatures of a Prince, who, under the powers granted, is independent, and to whom all the members owe faith and allegiance. Shall we find them in the allegiance of the people to the Crown, or in their obedience to the laws of Parliament? We shall not. For if that allegiance is not expressly, it is virtually and most effectually, dissolved. For, by a transfer of the "absolute powers" to make "all manner of laws, for the good and "happy government of a country," and to compel

compel the obedience and submission of the people to them, their allegiance was as effectually transferred as if it had been done in terms ever so explicit; it being impossible, in the nature of things, for a people to yield obedience to two distinct and complete legislative powers, whose laws must be ever variant from, and often repugnant to, each other.

Having thus before us those independent rights which exclude all political relation and subordination of the Proprietaries and people of Maryland to the State, it will be necessary to enquire, whether there are any, and what restrictions or reservations in the charter, of a contrary tendency. There is, in the clause which constitutes Lord Baltimore and his heirs "the Lords and absolute Proprietaries of the country," a "saving of the faith and allegiance, and sovereign dominion, due to us, our heirs and successors." But Charles did not consider, that "no man can serve two masters;" that the people of Maryland could not be his subjects, and at the same time the subjects of a Prince in whom he had vested all those complete powers

to which subjection is due. Had the inferior society been formed on the principles of the British Government, with its proper relation to the State; had a just and reasonable subordination and subjection of the body politic of Maryland to the legislative and executive powers of the British society, agreeably to its fundamental laws, been established, this saving would have been unnecessary. The faith and allegiance due to the Crown, and their obedience to the laws of the State, would have been secured by the same political bonds, and consequently as effectually in the province as in the kingdom. But the reverse being the fact; and all the powers granted having a manifest tendency to dissolve that "allegiance and dominion," the saving was nugatory, ineffectual, contradictory, and absurd.

There is also another provision, that the "laws" of Maryland "be consonant to reason, and be not repugnant or contrary, but as near, as conveniently may be, to the laws, statutes, and rights, of this our kingdom of England." Now let us suppose, that Lord Baltimore had established a mixed form of government, the exact resemblance

semblance of the British State, and had conformed, in all his laws, to the spirit of the laws of England; what would this have contributed towards the subordination of the country, or its political relation to, or union with, the British Government? The answer is, Nothing. Great Britain and Maryland would, in that case, have been two distinct, though similar independent societies, governed by two distinct heads, and yielding obedience to laws made by two different supreme powers, and nothing more. We may therefore conclude, that this provision, like the last I have mentioned, is ineffectual and absurd.

But when it is considered, that the Lords Proprietaries are laid under no obligation to return authentic copies of the laws made by the Maryland legislature, nor obliged to give any account of their proceedings either in their legislative or executive capacities; that there was no reservation to the Crown of a power of confirmation or repeal of the laws that should be made, should the Proprietaries condescend to transmit them; and that there was no right to hear and de-

termine appeals from the judicial decisions in the plantation; the provision under our consideration appears yet more nugatory and ridiculous. For, let us suppose, that a law was made by the British Parliament, to regulate some particular matter in Maryland, or even to repeal one of their provincial laws, because contrary to the laws and rights of the State, and that the Proprietaries and people should combine to disobey it. By what means could the Crown, or its servants, carry such a law into execution? Should they apply to the Proprietary, he is averse to the measure, and they have no coercive power over him. Should they apply to his executive officers, they are his creatures and dependents; their oaths of fidelity and allegiance are taken to him, and not to the Crown. They are sworn to execute the laws of Maryland, not those of England; and their interest and obligations unite in disobeying the order.

Indeed, among the many laws which have been made to bind the Colonies, none that have not agreed with the local interests of the Proprietary and people have been obeyed. The laws of trade have been most shamefully violated
and

and disregarded, in the Proprietary and Charter Governments. A law has been made to prohibit the making of steel, &c. the erecting of tilting hammers, and flitting mills. Yet there have been many steel furnaces, tilting hammers, and flitting mills, erected since the passing of the act. A law has been made to regulate the manufacture of hats, but it has not been obeyed. Individuals are interested in the disobedience, and the Proprietaries will not interfere to enforce an act where neither their own rights nor their interest are concerned, and more especially, where it is made to interfere with their power, however necessary the law may be to the manufactures or commerce of Great Britain.

There is one more restraint on the legislative and executive power of the Proprietaries. They are authorised, as I have shewn, to constitute an order of nobility, and “ to invest them with what titles and dignities forever, *so as they be not such as are now used in England.*” What the policy of this provision was, must rest in conjecture. Did it arise from a dislike in Charles to the aristocratical order of the British State, which had

been, and was at the time of the grant, opposing his arbitrary measures ; and did he intend to prevent the establishment of that order in America, whose rights he intended to enfeeble, if not to destroy, in Britain ? This conjecture does not seem void of probability, when we recollect, that he had conferred all the powers of legislation on a monarchical and a democratical order, to the exclusion of the aristocratical. Hence, it would seem, that, although he was willing that there should be a provincial nobility, he did not chuse it should be legislative, or bear any resemblance to that of the British State. However this may be, it is certain, that this restraint on the Proprietary power did not tend to unite the policy nor the manners of the inferior society to those of the kingdom, but rather, if it had been possible, to make the disunion more complete.

To point out, in detail, the mischievous effects of this illegal and unconstitutional Charter, would be more disgusting than entertaining, and is not necessary to my design. It will suffice, generally, to mention them. Under such a Charter, we are not to be surprised

prised at finding the powers of Government, in the feeble hands of a subject, improperly and injudiciously managed. The rights granted were so extensive, that they were calculated to alienate the Proprietaries from their attachment and subjection to the State, to lead them to devote those rights to the increase of their private interest, and to fill their minds with purposes of ambition. No lines, no principles, are laid down, nor any superior influence established, by which that ambition could be checked or controuled. They were constituted officers of a Government independent of its power, and unaccountable to it. Their only connection, or political relation, was with the people of the province. With these they were obliged by the charter to divide the legislative rights; but without any intermediate weight or balance to check either their own ambition, or the licentious desires of the people they were to govern.

Thus, left to themselves, discord and confusion naturally ensued in their legislative conduct. Perpetual contests for power succeeded. A variety of laws was proposed in turn, by the Proprietary, to the conventions of the people, and by them to the Proprietary, and

and alternately rejected, before any system of government could be established. The first which had any appearance of being settled, was a strange jumble of the monarchical and democratical principles, in which the latter were perfectly predominant. A number of persons elected by the people, others summoned by special writs of the Proprietary, and all those who did not chuse to vote at the elections, with the Proprietary or his Deputy, and his secretary, sitting and voting in one house, formed the first legislative authority of Maryland. This wretched system, after some experience of its absurdity and mischiefs, was succeeded by another, which consisted of a Governor, an Upper House, dependent, in form, on the Proprietaries, but in reality more on the people, and a house formed by the representatives of the people. Under this defective system the province has continued ever since, until the system itself became a suicide.

But neither under the first or the second system of government have any of the duties to the State been observed, nor have the people enjoyed that peace, protection, and safety,

for which men enter into a state of civil society, and for which they give up their natural rights and independence; and much less have they possessed that security and happiness which they must have enjoyed* in a province duly subordinate to the most perfect system of policy upon earth. The history of this province is a history of a total disregard to the rights of the Crown and the State, of wars with the natives, and of insurrections and rebellions against the Proprietary authority; rebellions, which have been suppressed more by the imaginary power of the Crown, and a remaining attachment to the mixed monarchy in the people, than either by the fidelity of the Proprietaries as subjects, or by their judgment in governing, or by their weight and influence in the province.

But, notwithstanding this imaginary power of the Crown, and this real attachment to the principles of the Parent State in many of the people, these perpetual contests for power, between them and the Proprietaries, have ever tended to enfeeble, and in the end have destroyed, the peace, good order, and government, of this inferior society. Self-interest
and

and ambition are passions natural to the hearts of men. When possessed of the means of gratification, they know no bounds. The moral, as well as political obligations generally fall before them. The Proprietaries, by this Charter, became possessed of the means by which they thought they could gratify both. A large extent of territory, and the powers of independent government, were those means. Proprietary instructions, founded in their private interest, and their ambitious designs, without the least regard to the rights of the Crown or Parliament, or to the interest of the province, are digested in England, and sent over to their Governors. Their Governors, bound by heavy penalties, are obliged to make them the rule of their government. Under their injunctions, many arbitrary and unjust claims are often made on the people, and many reasonable acts, necessary to the welfare of the province, have been refused. This has produced disgust, disrespect, and contempt, in the people for Proprietary dominion.

On the other hand, the people are naturally proud and licentious, and yield with reluctance

luctance to the government of a subject claiming independent rights. They cannot bring themselves to fear and respect him, while they retain the idea of a Sovereign to whom that fear and respect is only due. Hence they are led to oppose his conduct when unjust and arbitrary, and sometimes when not so, and often in their turn to invade the Proprietary rights and prerogatives. In these contests for power, the Proprietaries sometimes prevail in laying a foundation for oppressing the people, and at other times the people succeed in wresting from the Proprietaries those rights which are necessary to support their own power. From these sources have arisen those perpetual controversies between the Proprietaries, their Governors, and their Assemblies: controversies which lead the people into cabals, destroy the public order, enfeeble the powers of Government, and which have ever proved so prejudicial to the service of the Crown, even when the objects of that service were the protection and safety of the province against its foreign enemies*.

But,

* I shall content myself with giving one instance of the mischievous consequences of these dissensions, waving many

But, although the Proprietaries and people are at perpetual variance respecting their own powers, yet they seldom fail to unite in op-

many others, because, if this does not satisfy my reader, I suspect nothing can.

In the last war, the Colonies implored the protection of the State against the French and Indian invasions. They acknowledged themselves incapable, from their disunion, to repel them. A powerful fleet and army, at a great expence to the nation, were dispatched to their assistance. Requisitions passed from the Crown to the several Colonies, for their just proportion of aids in their own defence, with a parliamentary engagement, that a generous retribution should be made for their liberal exertions. One would imagine, from these facts, that a province, whose danger was so imminent, would suffer no interest, no views of ambition, to obstruct its public duty; that the Proprietary and his Assembly would lay aside their political disputes, and unite in the common defence. But the fact was the reverse. These just and reasonable requisitions furnished them with new subjects of controversy. Relying on the exertions of the Mother Country, and the other Colonies, their proportion of aids was not granted. And this opulent province, during the whole war, was saved from its ravages, and in the end from the mediated conquest, at the expence of the blood and treasure of Great Britain and the other Colonies. This conduct was certainly inconsistent with that equity and justice which ought to characterise the policy of every civil society, and in itself sufficient to disfranchise any inferior order of it. For, if that inferior order, in times of such danger, can neither protect itself, nor unite, when called upon, with its fellow-members, in the general protection; it certainly is erroneously constituted, and ought to be made more competent to the discharge of its duty to the society, and to itself.

posing

posing those of the Crown and Parliament. They consider these rights as interfering with their own power, and repugnant to their local interest; the instructions from the Crown, and even the laws of Parliament, as not binding on them, because their allegiance is due to the Proprietaries, and not to the King, and their officers are sworn to obey their own laws, not those of the Parliament. Instances may be produced of the Proprietary himself openly opposing the laws of trade, and preventing the officers of the customs from carrying them into execution, because he considered them as restraints upon the trade of his province.

There are few general laws made for the public safety, or any other general benefit, which will suit the different and local interests and views of all the members of a society. Some will be affected by one law, and some by another; and perhaps, on the whole, the sacrifice made to the public safety will be nearly equal in all; while the benefits received ever largely compensate for the injury sustained. It is therefore a maxim, founded in the nature
of

of civil society, that the private interest of the Members must ever give way to the public good. Now the laws of trade are the very laws I have described. On them, the numbers of our seamen, the quantity of our shipping, the commerce of the nation, and its naval strength, depend. And yet these laws, so important to the common safety, and even of the Colonies themselves, with every other, which affect the interest and views of only a few of the Provincials, have ever been disregarded. Disobedience to laws so necessary to the public safety, continued upwards of a century, naturally led to a total denial of the rights of the Crown, and of the authority of Parliament.

From the preceding observations, it is easy to perceive how weak and incompetent to the purposes of Government, such unlimited powers must be in the hands of a subject, who, shielding himself and his property under the general protection of the society, is left to pursue the sinister designs of his own interest and ambition. But, upon a view of the relaxed and enfeebled state of the Proprietary

prietary powers in the province of Pennsylvania, as well as in Maryland, long before, and at the time, the present rebellion broke out; this truth will be fully confirmed. The frequent attempts of the Proprietaries to oppress the subject, in some of which they were successful, in others not, added to their continual disputes with their Assemblies, had rendered their Government weak and contemptible in the eyes of the people. The administration of justice was totally relaxed. The laws for the preservation of the public peace were a dead letter. Their officers were without power, influence, or respect. In the time of the Stamp-Act, small and insignificant mobs, incited by a few seditious men, and which might have been easily suppressed by a small exertion of power, rose in opposition to it, without a single step taken to suppress or check them. Encouraged by this precedent, the same seditious men resolved to throw off all dependence on the British State. Trifling mobs were, at first, incited as before. These mobs produced illegal and seditious Committees; the Committees, treasonable Conventions and Congresses, until, at length, that spirit of licentiousness and revolt, which

had been so long nursed and matured under the unjust and unconstitutional rule of Proprietary power, broke out into open rebellion, which at once destroyed the Government of the province, and its ideal subordination to the State itself.

C H A P. VIII.

Of the Charter of Pennsylvania.

FROM Maryland, we will step over the line, and take a view of the Charter of Pennsylvania. For, although it is not next in order of time, yet, as there is so much similitude in the powers granted by them, that the reader will find but few remarks made on one which will not apply to the other, it cannot be improper. Indeed, we may safely conclude, that the scribe who made the draught of the last, must have had the first before him, as, in many instances, the rights and powers granted are described in the same words.

This Charter was granted by Charles the Second, in the year 1681-2, to William Penn, Esq; son of Sir William Penn. In constituting this inferior society, no regard was paid to the fundamental laws and principles peculiar and essential to the British Government. The royal pleasure, and the

humour and interest of the patentee, appear to be the only rules by which its rights and powers were adjusted and settled. Indeed, it is hard to determine, upon a view of them, whether Charles sported most with the authority of Parliament, or with the rights and prerogatives of the Crown,—with those rights which he held in trust for the benefit of his people, and for his successors, or with those which belonged to others, and over which he had not the least authority.

The Patent conveyed a tract of territory nearly as large as the kingdom of England, which was erected into a Seigniorship. “ Mr. Penn, his *heirs* and *assigns*, were made and “ ordained the *true and absolute Proprietaries*” of it.

The legislative rights granted to “ Mr. Penn and *his heirs*, and to *his and their* “ *deputies*,” were “ *free, full, and absolute* “ *power, for the good and happy government* “ of the country; to ordain, make, enact, “ and publish *any laws whatsoever*, for the “ *raising of money* for the public uses of the “ province, or for any *other end*, appertain-
“ ing

“ing to the public *state, peace, and safety, of*
“*the country*, or unto the *private utility* of
“particular persons, *according to their best*
“*discretion*, by and with the advice, assent,
“and approbation, of the freemen of the
“country, or of their delegates and deputies,
“to be assembled *in such sort and form* as to
“him or them should seem best.”

No words could have been devised more proper to enable Mr. Penn and his heirs to constitute an independent sovereignty, than those I have just cited ; none more proper to discharge them and the people from every degree of subordination and obedience to the State. Instead of incorporating the province into a body politic, giving to it that form, and those limited powers, which were necessary to its just relation and a constitutional subordination to the State ; Charles conferred on a *subject and his heirs*, an “absolute” right to judge of its form, and to establish it on such principles as best suited their *private interest and ambition*. Nor were they under the least restraint in respect to the powers upon which they might establish it. On the

contrary, special care seems to have been taken, that it should be both in name and fact independent of the British Government. For it appears evident, from the words I have cited, that whatever legislative rights and powers can be necessary to the private utility of individuals, to the internal order and peace of a civil society, to the raising money for the support of Government, or to the levying of aids for the defence of a country, were conferred by the Charter. So that, neither the Proprietaries, nor the people, could ever have the least necessity or occasion to ask of, or receive from, the Parliament, any act or thing beneficial or necessary to their safety or happiness. All those never-ceasing benefits, and that continual protection to obtain which men enter into civil society, and which form the political cement that binds the inferior orders and members of the politic body to its supreme head, were, in future, to flow from an independent Government established by themselves.

The superintendence of Parliament being thus rendered useless to the province, it became more especially necessary, in order to
create

create some small degree of subordination in its legislative powers, and to preserve a consistency in its laws with those of the State, that the Crown should possess a right to approve or reject its legislative acts, before they should assume the validity of laws. By this means, a kind of subordination to the Crown, though not to the Parliament, might, with proper attention, have been preserved. The ambition and private interests of the Proprietaries, and the licentious attempts of the people, might have been guarded against. But, instead of reserving a right in the King to appoint a Governor, accountable to him for his conduct, who should judge of the consistency or repugnancy of the provincial acts to those of the principal society; Mr. Penn and his heirs are appointed the hereditary Governors, with the sole and absolute right of appointing Deputies, who are finally to enact the laws, and of every other Officer, to carry them into execution. And that these laws should ever remain subject to no controul, it is, by a subsequent clause, declared, that they "shall be most absolute and available in law;" and "the liege people and subjects of the State" are enjoined to observe and

keep the same inviolably, “ under the pain
“ therein expressed.”

Here then, not only “ one absolute and
“ independent right with regard to *some par-*
“ *ticular affairs,*” is granted (as in the case I
have cited from the learned Puffendorff), but
every “ absolute independent right with re-
“ gard to *every* affair” which concerns either
the internal order and peace, or the ex-
ternal defence of the province; and that
too as fully as they are held by the
King, Lords, and Commons, over the do-
minions of the State. Were there no other
objections to this charter, this is so important
to the peace and safety of the State, that we
may safely affirm, with the author I have
just mentioned, that Charles the Second, in
this instance, “ plainly abdicated his authori-
“ ty,” and by admitting two heads in the
constitution, he established *a state within a*
state, and rendered it *irregular* and MON-
STROUS; and with the judicious Burlamaqui,
that this act being directly repugnant to the
fundamental laws of the British constitution,
which Charles was bound to support, was a
2 dangerous

dangerous violation of his trust, "null and
"void†."

Although we have not, as yet, before us, all the American Charters, yet it may not be improper here to remark, that this objection will apply, with equal force, to all of them, whether Proprietary or popular. The legislative, executive, and even the fœderative rights and powers, granted by them, are equally indefinite and independent of the British Government. They are so many mischievous and dangerous innovations, because they are not founded in precedents, and are in direct opposition to that polity upon which the constitution of our mixed monarchy is established. All the charters which

† This excellent writer further adds, "This is incontestably proved by the very nature of sovereignty, which is no more than the right of determining *finally* in society, and which, consequently, suffers nothing, not only *above* it, but even, that is *not subject to it*, and embraces, in the extent of its jurisdictions, every thing that can interest the happiness of the State both sacred and profane.

"The name of sovereignty cannot permit *any thing that is subject to human direction, to be withdrawn from its authority*; for what is withdrawn from the authority of the Sovereign, must either be left independent, or subjected to the authority of some other person different from the Sovereign himself."

preceded

preceded them, and all which have been since granted, have limited and restrained the grantees to the making of bye-laws and ordinances, subject always to the controul and repeal of Parliament; the grant of the Isle of Man excepted; and this grant, from its unlimited and independent rights, has been found so inconsistent with the public weal (though by no means so destructive of the peace and safety of the empire, as the American charters), as to be resumed for that reason by the Crown.

Having before us the legislative power of Pennsylvania, it will be necessary to consider what were the provisional restrictions imposed by the charter on it. There is a proviso relative to the making of laws, in the words of the charter of Maryland, that the laws to be made shall be "consonant to reason, and not repugnant or contrary to the laws, statutes, and rights, of the kingdom of England." On this provision I shall not repeat my observations, but refer to those made on the same article in the Maryland charter. But I will take the liberty to remark that, although this charter prohibits a repugnancy and disagree-
ment

ment in the provincial laws with those of the State, yet we find in it a subsequent clause of a contrary and most extraordinary nature. It not only places the legislature of the inferior society on a par of independence with the British legislature, but renders the last in a manner subordinate to the first. It authorises the provincial legislature to annul the most important laws of the English Government; the laws relative to property, real as well as personal, and those which essentially concern the conservation of the peace, and the personal safety of the subject, which, in all good policy, ought to be nearly the same throughout the dominions of the State. The words of this clause are, " And our further will and pleasure is, that the laws for regulating and governing property within the province, as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels; and likewise, as to felonies, shall continue the same as they shall be for the time being, in our kingdom of England, until the said laws shall be altered by the said William Penn, his heirs and assigns, and by the freemen of the province, their delegates and deputies."

Thus,

Thus, while the charter prohibits a discordancy between the laws of the inferior society and of the superior, it fully authorises it, and that legislature which ought to be *inferior and subordinate*, is impowered to annul the acts of that which is *supreme*.

There is also another clause intended to preserve the faith and allegiance of the Proprietaries and the people. But this, like the others, will be found, upon inquiry, equally ineffectual and futile. It directs, that a transcript, or duplicate, of all laws which shall be made within the province, shall, within " five " years after the making thereof, be transmitted to the Privy Council for confirmation, or repeal, within six months after " transmitted." Charles having, in effect, by the independent powers of the Charter, given up the right of Parliament to make laws for the province, or to repeal its acts, it seems, saw the propriety and necessity of establishing some check on its licentious conduct. This check, he thought, was safest in his own hands. That he and his predecessor, James the First, conceived that the Colonies were their private patrimony,

mony, and that the Parliament were not to consider them as territory annexed to the realm, or to interfere in their Government, is evident from all their Charters; and no part of them demonstrates this fact more fully than the clause before us. For, if America is a part of the dominions of the State, by what right did he assume, in his Privy Council, the power of repealing the laws of the inferior society? However this may be, the clause is merely directory, and not compulsory. There is no penalty, no forfeiture imposed on the Proprietaries, nor any mode by which the Privy Council can compel them to transmit the laws. And it cannot be reasonably supposed, that men, possessed of unlimited and independent powers, would not make use of them whenever necessary to gratify their ambition, or to their private emolument—nor that they would not use them to the prejudice of the rights of the Crown, and their dependence on the State—nor when they were so used, that they would transmit the laws to a judicature where they were sure they would be annulled.

But

But let us suppose, that the Proprietaries should feel themselves disposed to transmit the laws agreeably to the directions of the Charter, we cannot presume, that they would transmit those which they should have reason to believe would be repealed, before the time enjoined by the Charter should nearly expire : And this being five years, the province may be governed by them, during that time, however mischievous to the trade, interest, or safety, of Great Britain, or repugnant to the laws of the State, or injurious to the rights of the Crown. And if near the end of the term limited, they should be transmitted and repealed by his Majesty in council, that repeal may be disregarded, and the law be continued in force, without incurring any penalty or forfeiture, there being none imposed; or laws dissimilar only in form, and not in substance, or even the same laws may be re-enacted and continued in force for five years more. And I know of no means, supposing the charter to be valid, by which a legislature, whose powers are so independent, may be called to answer for it. Thus the province may, by a little art and address, be governed on principles of polity, heterogeneous, and repugnant

to

to those of the principal society, and sub-
versive of its true interest and safety.

There is also another clause, saving to the King and his successors, a right of "receiving, hearing, and determining, of the appeal or appeals, of all or any person or persons of, in, or belonging to, the territories granted, or touching any judgment to be there made or given." If this saving was intended as a check on the laws to be made by the concurrent assent of the Proprietary and the people, when injurious to the interest of Britain, or to the rights of the Crown, it was a nugatory and vain intent. Can it be supposed, that either the Proprietary or people, who have assented to a law, and who, if upon experience they should find it mischievous, or inconvenient to themselves, can repeal it by their own legislature, would ever appeal from one which they conceive to be beneficial, however derogatory it might be to the interest of Britain, or the rights of the State? It is not in reason to be expected; and facts prove the contrary. There are many laws of this province which are of this complexion, against the validity of which
there

there has been no appeal; nor ever will be, because they gratify the licentious desires of the people, and deeply affect the rights of the Crown and the Parent State. But, suppose such appeals should be made, and decrees should be passed by his Majesty in Council, to reverse the judgments founded on the laws transmitted, by whom are those decrees to be carried into execution? Every court, and every officer, judicial as well as ministerial, are as independent of the British Crown as the officers of justice in France, and dependent solely on the Proprietary and the people, and are sworn by their oaths of office to execute the very laws, the validity of which the decrees should oppose.

The clause by which Charles covenants, that neither he, nor his heirs nor successors, shall levy "any customs or taxes on the people, unless the same should be by the consent of the Proprietary, or the Chief Governor, or Assembly, or by act of Parliament," is an additional proof, that he meant nothing less, than to pay any regard to the fundamental laws of the State. For, did he imagine, that by those laws he held a right to impose and
levy

levy customs or taxes on British subjects? Or did he think he possessed authority to enable him, with "the assent of the Proprietary or "Chief Governor," to do it? or that it was necessary to reserve a right in Parliament to raise a reasonable proportion of aids in any part of the British dominions? However, this truth is evident, from the whole tenor of the Charters, that he was totally indifferent in respect to the preservation of his own prerogatives, and of every other right of the State, except that of taxation. This he seems to have determined, as the great object of his future designs, to secure if possible; and to have done it in various modes, that if one should fail, another might succeed. Should his Parliament be intractable on the occasion, he might, agreeably to the charter, apply to the "Proprietary," or to "the Chief Governor," or to "the Assembly," and, with the assent of any of them, levy the aids he wanted. But, it appears, he did not consider, or if he did, that he was indifferent about the difficulties he had laid in the way to the effectual exercise of Parliamentary authority; and that, in case they should grant the aids he should require, he had deprived himself, his successors,

and the Parliament, for ever, of the necessary officers and servants, who were to levy and collect the taxes imposed; and if the impositions should be disagreeable to the Proprietary and people, which, it is most natural to conceive, they would ever be, that the collection of them would be impracticable.

Upon the whole of these futile and absurd reservations, the only one that has the resemblance of a check on the unlimited powers granted to "Mr. Penn, his heirs and assigns," the only instance in which they are made amenable to justice, is in regard to "the laws of trade and navigation." They are directed to have an agent always resident in some known place, in, or near, the city of London, and ready to answer to the Crown for any misdemeanors "committed or permitted," by them, against those laws; to pay the damages ascertained in the courts at Westminster;—and in case of failure in the payment, the Government may be resumed by the Crown until it is made.

But,

But, notwithstanding this provision, it is well known, that the laws of trade have been in this province, from its earliest settlement, most shamefully violated. How should it be otherwise, when the Crown has the appointment of no officer in the province, except the Collector of the Customs? The other officers entrusted to carry these laws into execution, are in the appointment of the Proprietaries. It is not their interest to carry them into execution, and it is the interest of the people to disobey them. Where then shall this single officer find protection and support in the discharge of his duty, surrounded, as he is, by officers and people, subject to a different master, and ready to oppose his measures? Should he apply to the Proprietary Government, it would not be given. Under these circumstances, his ease and his interest lead him to watch the merchant just so much as to procure a bribe, which effectually closes his eyes against the most open importations of customable goods without an entry, and even of those that are contraband. This has been so common, that the art and practice of smuggling was never better understood, nor carried on with so much ease, in the

Isle of Man, as in the ports of the river and bay of Delaware.

Such being the legislative powers conferred by this Charter, we will next enquire what were the executive and fœderative. These we shall find not less indefinite and independent of the Crown, than the former were of the Parliament. "Mr. Penn and his heirs, and his " and their Deputies, and Lieutenants," were vested with "*free, full, and absolute power* " *and authority* to appoint *any* justices, magistrates, and officers *whatsoever*, for *what* " *causes ever*, and with *what powers soever*, " and in *such form* as to him or them should " seem most convenient." May we not here enquire, under what law of the State did Charles derive his power to delegate the appointment of all the executive officers of Government to a subject, and that too in absolute and indefeasible right? Certain I am, that the fundamental laws which settled and defined his powers forbid it. Had he, under those laws, any powers without the realm which he had not within it? I imagine not. Should he then have granted a power to a subject, and his heirs, to appoint the Judges of the
King's

King's Bench, Common Pleas, and Exchequer, and the Justices of the Peace of the several Quarter-Sessions within the kingdom, would the grant have been valid in law? It would not. The right of these appointments are personal in the King, and fiduciary for the benefit of his people. He cannot, therefore, delegate them to a subject for a *moment*, much less *for ever*.

But this is not the only objection to this extravagant clause. "Mr. Penn and his heirs, and his or their Deputies"—that is, the Deputies of Deputies, may appoint "any officers whatsoever, for what causes soever, with what powers soever, and in such form as to him or them should seem most convenient." Taking this clause in the plain import of the words (and so we must take it, because there is a declaration in the Charter, that such exposition of it shall be made and allowed in the British courts, "as shall be adjudged most advantageous and favourable" to Mr. Penn and his heirs), they have an undoubted right to establish *all manner* of courts of justice, offices and officers, *totally dissimilar* from those to be

found in the constitution of the principal society. They might have adopted the inferior Sanhedrims of the Jewish theocracy, or the Tribunals and Prætories of Rome, or the offices of the democratical Cantons of Switzerland, or even the Inquisition of Spain,

After showing this absurdity in the grant of the executive powers of Pennsylvania, I need not be particular in my remarks on the other prerogatives. I shall, therefore, only observe, in general, they were all that the constitution had intrusted to its Kings; such as, a right to pardon and abolish “ crimes and offences ”—“ to do all and every “ thing which, unto a complete establishment of justice, unto courts, tribunals, and “ forms of judicature, and manner of proceedings, do belong ”—“ to incorporate “ towns into boroughs, and boroughs into “ cities ”—“ to constitute ports, havens, and “ keys ”—to make “ ordinances for the preservation of the peace, and better government of the inhabitants.” To which were added, all the rights of war and peace. Mr. Penn and his heirs were further authorised to “ levy, muster, and train all sorts of men ”—
“ to

“ to make war, to pursue the enemies, and
“ to put them to death by the law of war,
“ and to do all and every other thing which
“ unto the charge and office of a Captain-
“ General of an army belongeth, or *bath*
“ *accustomed* to belong, as fully and freely as
“ any Captain General of an army hath ever
“ had the same.” These royal prerogatives
are the same, and transferred nearly in the
same words with those granted to the Pro-
prietary of Maryland. And these, I have
already shewn, are rights vested in the person
of the monarch in *trust*, not *in use*, for the
benefit and safety of the society, and there-
fore cannot be lawfully granted to another
in absolute tenure and inheritance. Could
this possibly be lawful, a King might,
when he pleased, not only divest himself and
his successors of all their fiduciary rights and
royalties, and give to the kingdom a new
King, but vest him with absolute sovereignty,
and thereby destroy the Government which
he is bound by the most sacred of all obliga-
tions to preserve. Such a power in a mixed
monarchy, or any other society, except in a
patrimonial kingdom, is inconsistent with the

nature of its civil constitution, and cannot exist.

It will throw yet more light on my subject, and not be ungrateful to the reader, to trace the conduct of Mr. Penn, just emerged from the condition of a subject, into all the powers of royalty and sovereign dominion. I shall, therefore, take a summary view of his different systems of Government, instituted at different periods. For, vested with powers subject to no controul, he not only adopted what forms of Government he pleased, without paying the least regard to the structure and principles of the State, but *altered, or abolished them, at his pleasure, and established others in their stead.* In doing this, we shall find abundant proof, that private interest and ambition, without any regard to his politic trusts, were the great pole stars by which his public conduct was directed. The sole right and possession of an immense country, from every acre of which he intended to draw a revenue, opened to his view a prospect of immense wealth; the extensive royalties, and independent rights, granted by his patent,
opened

opened another object yet more enchanting to the mind of man, that of becoming an independent Prince. But, well knowing that wealth and revenue were necessary to influence, that influence was necessary to power, and that power was the only means by which his ambition could be gratified and secured; he devoted, in the first place, all his talents to the improvement of his estate and his revenues. Governed by this policy, all his extensive rights, the prerogatives of the Crown entrusted to his care, and even his ambition itself, gave way to the settlement of his province, and to his schemes for increasing his wealth. He published a splendid account of the excellence of the climate, soil, waters, and other natural advantages, of the country. But the more effectually to allure the subjects of the State to emigrate to his new dominions, in compliance with the humour of the times, and particularly with that of the first adventurers, he gave up all the royal rights and franchises, and instituted a Government on democratical principles, without the mixture of a single ray of monarchy or aristocracy.

“ The

“The frame of Government,” for so it was called, was truly Utopian. A council, consisting of seventy-two members, always changing, and yet always in being, was established. The members were chosen by the freemen. One third of them were to continue in office for three years; one-third for two; and one-third for one, in such manner, that the offices of one-third should cease, and their places be supplied in annual succession. Of this council the Proprietary, or his Deputy, was to be perpetual President, entitled, on a question, to *three votes only*. The Assembly, or second branch, was, at first, to consist of all the freemen, afterwards of two hundred, and never to exceed five hundred. In these two popular Assemblies, all the legislative and executive powers were settled. By their joint consent, all laws were to be made, all inferior societies to be incorporated, all offices constituted, all officers appointed, and all the affairs of the province transacted and directed. Here, surely, Mr. Penn’s ambition was asleep, and all sense of duty to the Crown, as well as to himself, was forgotten, or he could not, at once, have offered up all those extensive franchises and royalties which he held in trust
for

for the Crown, to the humour of the people. For, what could three votes out of seventy-five avail in preserving the royal prerogatives in a popular Assembly? Or what share of power or influence did he expect to maintain, in a legislature composed of two democratical houses, by his triple vote? Does not this example of the abuse of the royal rights, in the hands of a subject, confirm the wisdom of the law, which has made them fiduciary, and forbids their alienation?

Mr. Penn, not from any regard to a just subordination of his province to the State, but perceiving that his own weight was little more than nominal, wished to bring this strange jumble of democratical powers into a less and more manageable compass. And it was fortunate, that the people had their reasons for entertaining the same desire. Their numbers were few. The attendance of so many of them on the public service was injurious to their private affairs. They were settled in a wilderness, and the clearing of their lands, and providing for the subsistence of their families, prevailed over their thirst for power. For, at this time, they were partly fed by the
benevolence

benevolence of the natives, whom, in the influence of our civilized pride, we call Savages; but who, considering the fewness of their immoralities, and their rigid observation of the moral virtues, deserve a better name. In this state of the popular temper, Mr. Penn called a Council and Assembly at Chester, in 1682. In this general Assembly, the numbers of the Council were reduced to eighteen, and of the Assembly to thirty-six.

In this strange system of legislation, founded in no precedent, nor consistent with any reason or policy, we find two popular branches, independent of each other, equal in power, and acting within the same sphere, without a head, or any thing to check or balance their unlawful pursuits. It is not, therefore, surprising, that, during its continuance, the province remained a scene of contests for power, discontent, and public quarrels; not in respect to the prerogatives of the Crown, for these were totally destroyed, but respecting the democratical rights and influence of the two Houses.

Previously to the establishment of this frame of Government, Mr. Penn had obtained from
the

the Duke of York, a conveyance of the tract of country now called the Territory of Pennsylvania, for which the Duke had before received a grant from the Crown ; but, as these were mere transfers of the land, the powers of Government over the people remained in the Crown. Yet, encouraged by the unlimited extent and independent tenure of his provincial rights, and concealed, as he was, behind an ocean 3000 miles distant from the seat and superintendence of the Crown, he, without hesitation, vested all the royal and legislative rights in the people of the territory, and united them in his provincial legislature. The means by which he accomplished this measure was artful and deceptive. He prevailed on the people, of both places, to believe, that the grants of the territory conveyed the rights of Government, as well as of the soil, and persuaded them to send an equal number of delegates to the provincial Council and Assembly. By this mixture of lawful (if we can suppose the provincial Charter to be lawful) and usurped authority, the province and territory were governed during eight years.

Nothing

Nothing less than a sense of the security he derived from the distance of his Government from the seat and superintendence of the Crown, could have induced him to take this measure, without its approbation. It was a bold and presumptuous measure, which affords a strong proof of what men, intrusted with unlimited powers, at a distance from the State, will presume to do. Did he reflect, that by thus mixing the people of the territory, over whom he had no powers of Government, with those of the province, in the legislative and executive authorities, every law they enacted, and every office, judicial or ministerial, they instituted, was void? that for every arrest made, for every penalty enforced, and for every life taken, in virtue of such laws, they were amenable to the justice of the State? and that, by thus usurping the powers of Government over British subjects, without the least authority, he was guilty of a high misdemeanor, if not of high treason?

However, it was not long before Mr. Penn saw the folly of his Utopian system; and that he had given up to the governed all the

rights of Government, and reduced himself to a cypher in the legislative and executive councils. He saw his province, which, being yet in its infancy, required all the aids of wisdom and harmony to facilitate its future improvement, made, by his own indiscretion, the theatre of political squabble and confusion. Being obliged to return to England, by a dispute between himself and Lord Baltimore, respecting the boundaries of their patents, he appointed five commissioners to transact the public affairs; and perceiving the natural turbulence of his new Government, he enjoined them, if possible, to dissolve it. But as these men could not succeed in the measure, he dissolved the Commission, and appointed a Governor.

If, by this step, he expected to provide a remedy against the anarchy which was ingrafted in his system of Government, he was mistaken. For, no sooner did his Governor call a provincial Council and Assembly, but the two orders of the Government appeared in their native confusion. The Assembly began with insisting on a redress of grievances, and the impeachment of ministers. The Governor, in return, wrested by violence, out of the

the hands of the Assembly, one of their members, whom he had illegally imprisoned, when he was about to be discharged by habeas corpus. The Council quarrelled with the Assembly, and the Assembly quarrelled with the Council. All was anarchy! And thus were the peace and rising prosperity of the province wrecked on the rock of republican polity, established by the Proprietary, whom the great but uninformed Montesquieu immortalises in the character of a second Lycurgus.

However, under this Government, the province and territories continued until the year 1696, when such had been the conduct of Mr. Penn and the people, that *William and Mary* found it necessary to resume the powers of Government into their own hands. The reasons given to the Assembly for this measure, by the Royal Governor, are too characteristic of the wretched state of the province, to be omitted. They were, “the neglect and miscarriages in the late Proprietary administration—the want of necessary defence against the enemy—the danger of the province being lost from the Crown”

“ Crown ;”—and for that—“ the constitution
“ of their Majesties Government and that of
“ Mr. Penn’s, were in direct opposition one to
“ the other ; under which circumstances,
“ their Majesties asserted their undoubted right
“ to govern their subjects in the province.”

After three years hard travail, Mr. Penn procured a restoration of his charter ; but it would seem, that it was upon condition he should not restore to the people their former democratical confusion. And we may reasonably conclude, that he had seen the folly of depriving himself and his heirs of the powers conferred by the royal grant, and was sensible of the mischiefs arising from it.

His Governor, Markham, called an Assembly, under the powers of the royal grant, but very different from that which had been settled in the provincial frame of Government. The Assembly complained of the change, but they complained in vain. They proposed a new system of fundamental laws, which were no more favourable to the rights of the Crown than the former ; but they were not adopted.

L

On

On the arrival of the Proprietary, and his assumption of the Government, the delegates of the people were repeatedly convened. The province was now destitute of any established form of Government. The rights both of the Proprietaries and the people were unsettled. They had no body of laws, no fixed rules for the descent of lands, or the succession of property. In short, all was confusion. And, besides, the Assembly had discovered, that they had been deceived in respect to the pretended right of the Proprietary to govern the territories. They saw the illegality of their union with them, and the impracticability of their former frame of Government. These considerations led to a third revolution in their system of polity.

But before this revolution was effected, much contest took place ; Mr. Penn zealously contending to regain those powers he had weakly given up, and the people, for those rights and privileges which they had lately possessed. Neither of them chose to appeal to the Crown for a decision of the controversy. They knew, too well, that both would have

have been equally exposed: Mr. Penn, for having granted to the people all the rights of the Crown, intrusted to his administration; and both Mr. Penn and his Assembly, for assuming a power of life and death over British subjects, without the least authority. However, at length, the matters in dispute were compounded. It was agreed, that the Assembly should hold all the rights of the House of Commons, and that the rights of the Crown, and House of Lords, should be divided between them. But the partition was not equal, nor consistent with the nature of mixed Government. The people had art and address sufficient to secure the greatest part. This will appear from the provincial charter granted by Mr. Penn in the year 1701, under which, without any fundamental alteration, the province has been, I can scarcely say, *governed*, ever since, until the late declaration of American independence.

By this charter, the provincial Government was separated from the territorial. A new charter was also given to the territory, formed on the same model, and in no ef-

fential point different from the provincial. These charters were accepted by the people. The same person has ever been appointed Governor of both by several commissions. As provincial, he is appointed by the sole power of the Proprietaries; as territorial, by them, with the approbation of the Crown.

The legislative Council was intirely abolifhed, and the territorial, as well as provincial, Government has, ever fince, confifted of only two legislative branches, a Governor and Affembly. The Governor has a right to negative all bills. The Affembly is annually chofen, and when met, for which there is a day fixed in every year, they have power “to *fit* on their own adjournments, to prepare bills, impeach criminals, redrefs grievances, with all other powers and privileges of an Affembly, according to the *rights of free-born fubjects of England*, and the customs obferved in any of the King’s plantations.” The Governor holds the right of appointing the magiftrates and the judicial officers; but the executive officers, viz. Sheriffs and Coroners, are annually chofen by the people, and Clerks of the Peace by the

Justices of the Peace in their sessions; the Governor having the right to appoint one out of two persons so chosen. The commissioners and assessors for the levying and raising all taxes, are annually elected by the people, on which choice the Governor has no negative. The High Treasurer of the province is appointed, annually, by the Assembly, to whom alone he is accountable for his conduct. The salaries of the Governor, and of every officer of Government, are annually settled and granted by them, and paid by their orders drawn on the Treasury*. These salaries

* A Proprietary Governor, if an honest man, is certainly the most wretched of human beings. It is a maxim of the highest authority, that "a man cannot serve two masters." But this unhappy being is bound to obey *three*, whose interest and views are very different from, and often repugnant to, each other. He receives instructions from the Proprietaries, founded in their private interest, and gives bond under a heavy penalty to obey them; he is dependent on the Assembly for the annual subsistence of himself and family; and he receives, occasionally, instructions from the Crown. If he does not rigorously fulfil every Proprietary mandate, however injurious to the province, or inconsistent with his royal instructions, he loses his office, and is liable to the penalty of his bond. If he does not gratify the Assembly in what they think just claims, he lives in perpetual quarrel, if he may be said to live at all, for he certainly loses his salary. The yoke of his third master has ever been

salaries they increase or diminish, grant or withhold, at their pleasure. Thus the legislative powers of the monarchical and aristocratical parts of the British constitution, were divided between the Proprietary and the People. The rights of the Crown to call, prorogue, or dissolve the Assembly, and to appoint and direct the Treasury, were given up to the Assembly; the right to appoint Sheriffs and Coroners surrendered to the People.

By this Charter, we may perceive, that Mr. Penn recovered some of those legislative and executive rights, which he had, to serve his own interest, imprudently given up; such as his right of finally assenting to, or reject-

the most easy, not only because most reasonable, but because his sins against the royal orders are concealed. It is always the interest of the Proprietaries, and sometimes of the Assembly, to conceal them, and no inquisition is made after them. The Privy Council, and the Board of Trade, have hitherto relied too much on the integrity of the Proprietaries, and their Governors, in their management and rule of their provinces. Whether this has arisen from their backwardness to interfere with the unlimited rights of Proprietary dominion, or from their other engagements, I shall not determine. But, however, the fact is certainly so. And to one of these causes the continuance of the Proprietary Governments is certainly owing.

ing,

ing, all legislative acts, and of appointing the magistracy, with a number of others of less consequence. But, instead of retaining a right to call the Assembly, occasionally, by his writ, he made his Charter a perpetual writ for calling an Assembly annually, with a right to continue sitting the whole year, or to sit occasionally on their own adjournments. He gave up the right of appointing the executive officers of justice to the people, and all participation in the provincial treasury. In this strange manner were the principles of Government jumbled together, without the least regard to the rights of the Crown, or the subordination of the province to the State. Two independent powers, acting within the same sphere, and having a right to decide on the same matters, were placed in opposition to each other, without any intermediate check or balance. There was nothing to curb a lawless exercise of their distinct rights; nor was there even that slender security which arises from an equality of power. The Proprietary, who was placed in one scale, retained a small share of those rights which he ought to possess as a just dependent representative of the Crown, and which were neces-

fary to his weight and influence in the Government. To the Assembly, which was placed in the other scale, he granted many of those important rights, without which he could maintain neither the authority of the Crown, nor the public peace.

But though Mr. Penn did not recover all his former unlimited powers, yet he obtained enough to create a thirst for more. From this time, his actions prove, that he invariably pursued his private interest, and the objects of his ambition, without regard to any other consideration whatever. Equally inattentive to his duty to the Crown, and to the rights of the people, which he had thus solemnly confirmed, his whole conduct, when present, and his instructions to the Governors when absent, bore no other complexion. On his part, attempts to wrest from the people those rights which he had conferred on them, were continually made. On the other hand, the Assemblies, naturally fond of their rights, and perceiving the danger of such extensive powers as were conferred by the royal patent, on a subject *in no respect dependent on, or*
accountable

accountable to, the Crown, as constantly opposed those attempts.

The history of the first Proprietary is replete with instances of his violations of public faith with the people †; of his breaches of contract with the first adventurers; of his appropriating the most valuable lands to his private use, which had been appropriated to theirs; of his misapplications of the public monies, without accounting for them; and of

† Mr. Penn, at first, granted his lands to the people for a certain sum of money for each hundred acres, without reserving an annual quit-rent. But, soon after his assuming the Government, he began to reserve an annual rent, payable for ever, in addition to the purchase-money. Against this burden the people remonstrated. But Mr. Penn, artfully distinguishing between his two capacities of Proprietary and Governor, and insisting that Government ought to be supported with dignity and splendor, and that, by applying these rents to that support, the people would be exempt from taxes, they agreed to the measure. Upon this ground, the quit-rents ought to be considered as public money, in the nature of the civil list, and, in all equity, to be applied to the support of the King's representative. But the custom was no sooner established, than Mr. Penn applied them, without hesitation, to his private use, and has considered them, ever since, as a part of his private estate; while the people have been obliged to support the Governor, and the officers of justice, out of their own purses. The immense revenues arising from these rents, are to be seen in the Appendix.

his

his extortions, and the extortions of his officers, against whom, supported as they were by his power, the people could obtain no redress. The officers of the courts of justice were of his own appointment. They held their commissions during his pleasure. All suits brought against him or them, were determined by these dependent judges. In Britain, a subject cannot receive an injury from any of the officers of the Crown, or even from the Crown itself, without having a perfect remedy. His claim is examined, and decided, before independent judges. But, in this inferior society, the Proprietaries and their officers are both judges and parties: So that no justice or relief against their oppressions can be obtained by the people. These causes have destroyed all respect for the Proprietary Government. Its influence and power being directed by private interest and ambition, and not by the public benefit, has become contemptible, weak, and odious to the people. Hence, parties and public contests for power took place, the public peace was neglected, and the public safety endangered. In this confusion, neither the rights nor interest of the Proprietary or people were safe.

And

And hitherto, neither of them had perceived, that the security they wanted was only to be found in a just subordination to the State.

Mr. Penn was a man of education, and strong mental abilities, though by no means versed in politic law, or the science of Government. His genius had led him to the study of religion, and to become a noted Preacher and Head of the Quakers. He was also a man of uncommon application to whatever he undertook. He had now been in the possession of the Government thirty-six years. Here experience became his instructor. From thence, he learned, that neither his first Utopian systems, nor even that in which he had confounded the principles of monarchy and democracy, were competent to the end of civil society. He was convinced, that however great his abilities might be, they were not sufficient to govern the province; and that it was absolutely necessary, not only to its public peace, but to the private interest of his family, to surrender the Government. Strongly impressed with this truth, and foreseeing the mischiefs which would arise to his descendants, should he retain his powers, he
made

made the proposal to the Earl of Oxford, then Prime Minister. A contract was accordingly made, in which the Crown agreed to give 12,000*l.* for the surrender. Of the purchase-money 2000*l.* was paid, and the Attorney General was directed to draw the deed †. Mr. Penn being suddenly seized with a palsy, became insane, and incapable of executing it. But, surely, under this contract, the Crown hath an undoubted right to compel the heirs of Mr. Penn, upon a tender of the residue of the purchase-money, to a specific performance of it.

In the year 1718, Mr. Penn, after lingering seven years under his disease, died. But neither his ambition, nor his attachment to his private interest, nor the turbulence of his Government, died with him. The two former descended to his successors, and the seeds of discord were inherent in the injudicious constitution of his Government. To trace minutely the arbitrary conduct of his successors, and their Governors, acting under

† An entry of the contract and payment, I have been informed, is to be seen in the minutes of the Privy Council.

their

their secret instructions, their perpetual contests with the Assemblies for more power, and to skreen their private estate from contributing towards its own protection, and the consequent mischiefs and obstructions to the service of the Crown, would be tedious to the reader, and fatiguing to the writer. And yet a brief recital of them is necessary to my subject.

Many instances may be found, in the history of this province, of a cheerful compliance, in the Assemblies, with the requisitions of the Crown, while they possessed the sole right of disposing of the public monies. For this right they held under several acts of Assembly, assented to by the Proprietaries. That the Proprietaries violated their trust, in giving up to the people so important a prerogative of the Crown, no one can doubt. However, it was a temporary right; and while it remained in the Assembly, they continued to comply with the royal requisitions, until their fund was exhausted. But, even for this compliance with their duty to the Crown, they were severely censured and abused by the Proprietary Deputy.

Their

Their own funds being exhausted, the Proprietary assent became necessary to their grants. Aids were offered on terms the most just, and in the only modes by which they could be possibly raised; but every obstruction was thrown in their way by the Governors. Nothing would satisfy the Proprietaries, but a total exemption of their estate, and an absolute right to direct the people in the manner in which their aids to the Crown should be given. And upon these unjust principles, no less than seven different supply bills were rejected by them.

The Court of France had long meditated the conquest of North America. The measures taken for that purpose alarmed the Colonies. They implored the protection of Great Britain. A fleet and army was sent over to their assistance. And requisitions passed from the Crown, to the several Assemblies, to unite in granting their reasonable proportion of troops, to co-operate with the King's forces, In consequence of these requisitions, and in discharge of their duty to the Crown, and themselves, the Assemblies of this province tendered bills to the Proprietary Governors,

8

granting

granting to the Crown, at different times, the following sums, viz.

£. 10,000	}	To Governor Hamilton.
15,000		
20,000	}	To Governor Morris.
25,000		
15,000		
50,000		
60,000		
£. 195,000		

The first five of these sums were refused by the Governors, under a pretence, that the tenor of the bills granting them was contrary to an old royal instruction. This instruction had long before been superseded by a provision in an act of Parliament, made at the instance of the Crown, to remedy the mischiefs intended to be prevented by the instruction. The bills were by no means inconsistent with the act, nor the spirit of the instruction; and several of the Proprietary Governors, when it suited the interest of the Proprietaries, had considered it as obsolete, and not obligatory. Yet this obsolete royal instruction was relied on, and held out to the people, as a justification for refusing the aids offered. The Assembly knew, although they could not prove, that

that the impediments to their grants were secret Proprietary instructions. They called on the Governor to produce them, that they might know on what ground they were to act, and whether they were to obey the requisitions of their Sovereign, made for the safety of the Province, or the mandates of a subject, founded in his private interest, and the grossest injustice. But their intreaties were disregarded, and the instructions carefully concealed by Governors Hamilton and Morris. However, at length, a Governor (William Denny, Esq;) was found, who, though bound in a penalty of 5000 l. to obey, if not to conceal them, struck with their injustice and cruelty, at a time the province was in the most imminent danger, was hardy enough to lay them before the Assembly.

It now appeared, that the only impediment to the aids granted to the Crown, were these latent, illegal, and unjust instructions, *forbidding the Governors to assent to any act for taxing the Proprietary estate towards the common defence.* I call these instructions, what all men will call them, illegal and unjust; because the bills were land-tax bills, by which
all

all the lands in the province were to be equally rated ; and by the laws of the British constitution, the landed estate of every nobleman in the kingdom, of the Prince of Wales, and even the revenues of the Crown itself, in every act of Parliament for laying a tax upon real estates, are included. Why then the Proprietary landed estate, and more especially their immense annual revenues, should be exempted, no reason can be assigned, except that which arises from Proprietary ambition, and a thirst for a pre-eminence over their people, which is neither claimed by the nobility, nor by the King himself over his subjects ?

At length, more from a dread of the complaints of the Assembly to the Crown, which had been threatened, than from a consciousness of the injustice of the instruction, the Proprietaries gave way : but not to the taxation of their estate ; for they dreaded a precedent, however equitable and just, which should place their revenues in the same state with those of the nobility, or even with those of the Crown ; and therefore, to avoid the precedent, they gave what they called a “ free
M “ gift,”

“ gift,” towards the protection of their *own estates*, in common with the people’s. The Assembly justly disdaining the terms, yet, in compliance with their duty to the Crown, passed the bill for granting 60,000 l. to the King’s use. This sum, together with the “ free gift,” were soon expended. Further supplies were called for by the Crown. The Proprietary instructions remained unrevoked. A bill for granting 100,000 l. taxing the Proprietary estates, in common with those of the people, was presented to the Governor. The former contest was renewed, and both parties were pertinacious. The province was invaded, and the King’s service was obstructed.

Sir Jeffrey Amherst commanding the King’s forces in America, perceiving the impediments to his Majesty’s service, given by so opulent a province, came to Philadelphia with a design to remove them. He judiciously conferred, first with the Proprietary Governor, and then with the leading members of Assembly. The King’s service being the great object of his duty, he wished to prevail on either party to give way. The Assembly was obstinately just; and the Governor, notwithstanding his
bond

bond to obey the instructions, after much delay, was prevailed on to pass the bill. For this act of duty to the Crown, and of justice to the People, Governor Denny was superseded by one of the Proprietaries. On his return to Britain, he was threatened with a suit on his bond. But taking good advice, he withstood the threat, and nothing was done. The Proprietaries also took advice, and being convinced, that their instructions, and the bond to observe them, were fundamentally illegal and unjust, did not presume to bring them into legal discussion.

Thus did the Proprietaries, relying on their unlimited powers, and the influence of their immense estate, venture to counteract the requisitions of the Crown, to obstruct the aids of the people to their sovereign, for the common defence, to trifle with the safety of a province committed to their care, and even to throw it into tumult and disorder, when the enemy was within its borders, and when union and harmony was most necessary to its preservation. Regardless of their duty to the Crown, of their reciprocal obligation to their fellow-subjects, and of the high and im-

portant trust committed to their hands ; they would not suffer their Assemblies to grant the aids for the common safety, unless their own enormous estate was exempted from its reasonable contribution.

I should not do justice to the Assembly, if I did not add their own concise arguments, and warm expostulations with the Governor, in this important contest. They tell him, in answer to one of his messages, “ On our
 “ saying, that some Proprietaries and Gover-
 “ nors of *several colonies* assume more preroga-
 “ tives and privileges than were ever claimed
 “ by their *Royal Master*; the Governor
 “ grows warm *in behalf of the Proprietaries*,
 “ and demands, with all the air of a person
 “ conscious of being in the right; *What in-*
 “ *stances can you give of that assuming be-*
 “ *haviour of your Proprietaries?* We answer,
 “ The present instance; for the King does
 “ not claim an exemption from taxes for his
 “ private estate, as our Proprietaries do.
 “ *Have they ever claimed any right or prero-*
 “ *gative, not granted them by the Royal Char-*
 “ *ter, or reserved by that of their father?*
 “ Yes, the right of being exempt from taxes
 “ for

“ for their estate in Pennsylvania, when all
“ their fellow-subjects (for the Proprietaries
“ are subject, *though the Governor seems to*
“ *disdain the term*) both in England and
“ America, not excepting even the Lords
“ and Commons, are now obliged to undergo
“ a tax for the recovery of a part, and de-
“ fence of the rest, of that very estate. This
“ right is not granted by the Royal Charter,
“ nor could it be granted by their father’s
“ Charter. *Can you lay to their charge one*
“ *instance of injustice or severity?* This is an
“ act of *injustice* and *severity*, to insist, that
“ the people shall not be allowed to raise
“ money for their own defence, unless they
“ will agree to *defend the Proprietary estates*
“ *gratis*. If this be complied with, and the
“ war continues, what shall hinder them
“ another year, when the 50,000 l. are ex-
“ pended, to require, that before we are al-
“ lowed to raise another sum for the same
“ purpose, we shall agree, not only to defend
“ their lands, but to *plough* them. For this
“ their Lieutenant may allege, “ the usage
“ and custom in Germany,” and put us in
“ mind, that we are chiefly *Germans*. Who
“ can assure us, that their unappropriated
M 3 “ lands,

“ lands, so long kept untenanted and idle,
 “ are not reserved in expectation of some
 “ such fortunate opportunity? Can other
 “ instances, in answer to the Governor’s
 “ questions, be necessary? If he thinks it
 “ discreet to insist on more, they may be soon
 “ at his service.” Among many of the instances alluded to by the Assembly, the following was one. The Proprietary had, long before, prevailed on the people to pay an annual rent for every hundred acres of land, besides the purchase-money, towards his support as Governor of the province, and other public uses; pretending, that it would relieve the people from taxes. But, as soon as the Proprietary gave up the Government to a Deputy, he forgot his engagement to the people, and considered these rents as his private estate, and left his Deputy to be supported by taxes on the people. The immense sum he thus cajoled the people out of, is to be seen in the Appendix.

What mischiefs, less than these, could any sensible man expect from an union of immense property, and exorbitant powers, in the hands of a subject? Does not all experience

ence prove, that property begets influence—
influence power—and that when this artificial
power is united with real and unbounded au-
thority, it never fails to produce lawless am-
bition, and a thirst for *supremacy and inde-
pendence*?

The mischiefs arising from Proprietary in-
justice and ambition, were not confined to the
service of the Crown. The disputes between
the two branches of the legislature, have often
broke out into the most dangerous tumults and
riots; riots which ever sprung from very
unusual causes. They were riots, not arising
from the licentiousness of the *governed*, but
from the ambitious and interested designs of
the *Governors*. For these riots were raised,
and led by men of their own party, to en-
force their own unjust measures, while no
instance can be produced, from the first settle-
ment of the province, of any riot on the part
of the *Assembly*, in opposition to the Pro-
prietary claims. This province was original-
ly settled by Quakers. Many of the esta-
blished church soon after joined them. These
men, while they retained their public influ-

ence, were ever averse to tumults, and contented themselves under their oppression, with appealing for justice to the throne. A brief account of these riots will not be foreign from my subject.

So early as the beginning of this century, viz. in the years 1706 and 1710, during the rule of the first Proprietary, by the tumultuary conduct of his partizans, he overawed the general elections, and procured Assemblies entirely subservient to his purposes. In the year 1740, his successors, having these precedents before them, and having failed in many arbitrary designs, founded in their private interests, resolved to follow the example of their predecessor. This could not be done without violating the freedom of the elections. A mob was raised in Philadelphia, and led by their own Justices of the Peace, to drive the Electors from the place of voting. This was effected for a time; but, at length, their antagonists having collected their force, repulsed them in their turn.

In the beginning of the last war, a mob was raised in the county of Chester, and brought down to Philadelphia, to compel the Assembly
to

to exempt the Proprietary from its just proportion of aids demanded by the Crown, for the defence of the Colonies against the French and Indians. To these aids the Proprietaries had forbid the Governor, by their instructions, to contribute, although the French had actually invaded their province. The Assembly were obliged to admit this tumultuous body, headed by the Proprietary partizans, into the house. But, upon having explained to them the offers they had made, in pursuance of the royal requisitions, and the unjust and arbitrary obstructions given to them by the Governor, the people were satisfied, and no mischief ensued.

Shortly after, another mob, well known in the history of this province by the name of the Paxton Rioters, was raised on the frontiers for the same unjust purpose. These men were Presbyterians, who had lately become the friends and allies of the Proprietaries, and whose enthusiastic zeal had taught them to hate what they called Savages, Infidels, and Heretics, and that it was lawful to put them to death. In consequence of this opinion, they had lately massacred all the Indians in the
town

town of Conestogo, near Lancaster, where they had lived many years inoffensively under the protection of the Government. Of this cruel and unprovoked murder, little notice was taken by Government, although it was warmly pressed by the Assembly to bring them to justice.

The annals of mankind afford no instance of a massacre more horrid and savage than that of Conestogo. These unhappy Indians were the remains of the nation who received Mr. Penn, on his first arrival in the Delaware, and with unbounded hospitality supplied his people with every necessary their country afforded. They were settled on a tract of land, given to them by Mr. Penn, as a mark of his gratitude for the benefits he had received. Their demeanor had been, from the first settlement of the province, peaceable and upright. But they were infidels, and for that reason alone became the objects of Presbyterian vengeance. A number of those enthusiastic sectaries, having doomed these inoffensive people to destruction, came down from Paxton in the night, and, with a zeal equal to their barbarity, murdered all the

the old men, women, and children, and, setting fire to their houses, burnt their bodies. The young men and boys, who happened to be absent in hunting, escaped their fury. On their return, they found no remains of their ancient fathers and mothers, of their wives, brothers, sisters, and infants, but their bones and ashes. Not to dwell on a subject in which humanity must be so much wounded! The young men and boys sought immediate refuge in the gaol and work-house at Lancaster, hoping to be safe under the eye of the magistracy; but they sought it in vain. Forty of the same sectaries, not yet fatiated with blood, in a few days after broke open the gaol and work-house, at noon-day, and sacrificed these unfortunate men in addition to their massacre at Conestogo. It was remarkable, with what perfect resignation these unhappy victims submitted to their fate. Retired to a particular room, which would hold them all, and fallen on their knees, not to implore the mercy of their murderers, but that of Heaven, they, without a murmur, and with all the coolness of perfect resignation, received the broad sword and tomahawk in their skulls. A little boy, who escaped to a necessary, in

hope of safety, had climbed up to the joists; but even this infant did not meet with mercy from the furious barbarity of these fanatics. An old grey-headed elder, of their meeting, in his inquisitive search, found him, and, with no more remorse than he would have destroyed a wolf, pierced his heart with a ball from a rifle.

This cruel and unprovoked massacre alarmed every honest man in the province. It called forth the attention of the Assembly, who finding a shameful indolence in the Government, voted a reward of 500*l.* for apprehending each of the murderers, and pressed the Governor to take the proper measures to bring them to justice. A proclamation was issued, offering the reward, but no other step was taken †, although the massacre was committed in the presence of the Proprietary magistracy, and the names of many of the murderers were well known; and though the Assembly and people, in general, were ready, and anxious, to unite with the officers of Government in bringing them to justice.

† No order to the Sheriff of the county, or warrant, was ever issued for apprehending them.

Encouraged

Encouraged by this tenderness in the officers of Government towards these enthusiasts, fifteen hundred men, armed with rifles, proceeded from the frontiers, towards the city of Philadelphia, where the Assembly was sitting. Their design was, to compel them to exempt the Proprietary estate from taxation. Thus far only the views of the Proprietary party, who had advised the measure, extended. But these lawless men, as soon as embodied, resolved to add to their original design a massacre of one hundred and thirty friendly Indians, who had taken refuge from the French, in Philadelphia, under the protection of Government. The scheme was conducted with so much secrecy, that the Assembly had no notice of it until the rioters were near the city. It providentially happened that a fall of rain had rendered the Schuylkill unfordable. This stopped their progress. The Proprietary party finding that they had raised a Devil which they could neither direct nor appease, and the Governor, alarmed at the consequence which might attend the murder of so many innocent men, under his own eye, and to whom he had pledged the public faith, called on the members of Assembly for their assistance.

These

These armed their friends, and, before the rioters could cross the Schuylkill, the city was in some posture of defence. The military array of the citizens intimidated the rioters. They gave up their coercive power over the Assembly, and their intended massacre of the innocent Indians, and contented themselves with sending two of their number to represent their pretended grievances.

These instances of riot are related to show, that those who were bound to preserve the public peace became the common disturbers of it; and that where the Governor of a province prefers his own, and the private interest and views of his family, to his duty to his Sovereign and his fellow-subjects, there can be no Government.

The Assembly, convinced of this truth, on a retrospect of the Proprietary conduct ever since the settlement of the province; of the perpetual disputes between the two branches of the legislature; of the dangerous parties, tumults, and riots, occasioned by them; and of the want of that security of person and property, for which men enter into civil society, determined,

determined, if possible, to get rid of these mischiefs. Untainted in their loyalty (for, at that time, Eastern sedition had made little impression in Pennsylvania), they resolved to petition his Majesty to take the Government of the province under his royal care, by virtue of the contract which I have before mentioned to have been made with the first Proprietary. For this purpose they adjourned, and having advised with their constituents, they returned to their seats perfectly convinced, that they were acting agreeably to the *general sense* of the people, the Proprietary dependents, and their Presbyterian allies excepted. The petition was accordingly forwarded, and an agent sent over to prosecute it. *This petition yet remains before his Majesty, in Council, undecided.*

I cannot help here remarking, from a perfect knowledge of the state of the province, that, had the people been gratified in this reasonable petition, so consistent with the interest of the Crown and their own safety, the province of Pennsylvania would not have been brought into the *present* rebellion. And had so rich and powerful a province, to which several of the Middle Colonies look up as
the

the rule of their conduct, remained steady in its allegiance, there is every reason to believe, that others would have followed the example. Nor would the rebellion have extended further than the New England provinces †.

This petition for a change of the Government, from Proprietary to Royal, was truly

† The force of this argument will be evident, when it is considered, that, although the Congress voted by provinces, a single Delegate of this province gave the casting vote for American independence. Had this opulent and commercial province refused the American union, and taken the ground of accommodating the difference between Great Britain and America, there must have been a majority; which would have pursued the same measure. That majority would have influenced others. And it is much to be doubted, whether the pride of the Virginians and South Carolinians would not have been restrained. South Carolina, in the first Congress, was totally averse to independence. However, it was upon these principles that the Author of these Reflections exerted his utmost endeavours to prevail on the Assembly of Pennsylvania to withdraw their delegation from the Congress. And in this he had certainly succeeded, had he not met with every possible opposition from the Proprietary party in the Assembly. The father-in-law of the then Proprietary and Governor (late Chief Justice of the province, and the leader of the Presbyterian faction in the Middle Colonies), another judge of the same court, with every justice of the peace, and all the members under their influence, united with the Presbyterian party in opposing him. And yet he failed in his attempt only by a *single vote*.

an unfortunate one. Unfortunate, as it did not meet with success ; and unfortunate, as it led the Proprietary to take from a number of worthy men who had signed the petition, and had been most active in the preservation of the public peace, the offices of magistracy, and to supply their places with men averse, not only to his Government, but to that of the Crown.

Heretofore the Presbyterians had possessed little or no share in the magistracy, which had been chiefly composed of Churchmen and Quakers. To acquire some share of power, they thought the disputes between the Proprietaries and their Assembly afforded a good opportunity. They, therefore, devoted themselves throughout the province to the support of Proprietary measures, however unjust and arbitrary. In return for their good services, the Proprietary filled up the vacated offices with Presbyterians ; and to secure their future fidelity, he created a number of new magistrates, all of the same persuasion, to the exclusion of the Church and Quakers. From this unjust and impolitic conduct, it happened, that, at the time of the opposition to the Stamp-Act began, and ever since, to the

N

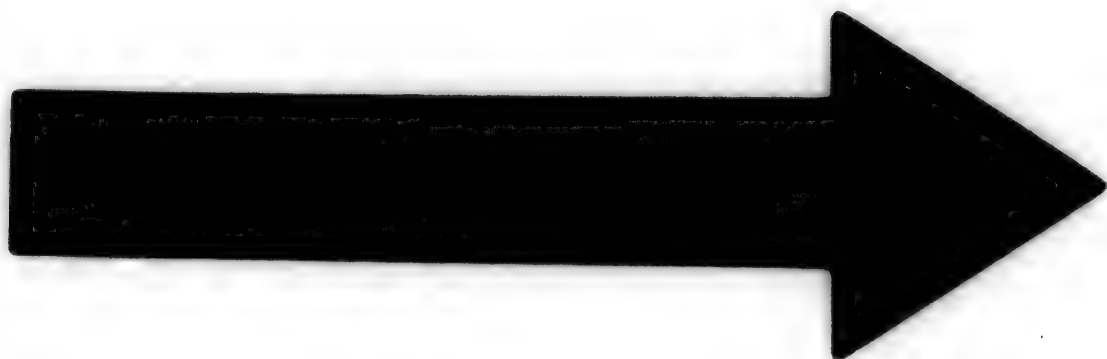
declara-

declaration of American independence, these men, disaffected, from principle, to the British Government, formed the Proprietary magistracy.

When the stamped paper arrived, a mob was raised in Philadelphia, to prevent its landing. The Proprietary officers were inactive spectators. On the arrival of the Tea, when the agents of rebellion, from New England, had endeavoured to diffuse its poison throughout the Colonies, mobs, headed by the Presbyterians, were again excited; and, although trifling and insignificant in their numbers, and easy to be suppressed, they were permitted to prevent the landing of the Tea, to tar and feather the loyal inhabitants, and among them an officer of the Customs whom they nearly murdered; and yet no essay was made to suppress them. The powers of Government, in the hands of the Proprietary and his dependents, were asleep. The former discovered no concern about them, no fear of them, nor the least desire that the tumults should be suppressed; and the latter were the abettors and promoters of the sedition.

The

The motives which governed the leaders of the sedition were obvious; but, from what principles this political stupor in the Proprietary conduct arose, may be thought, by some, rather problematical. By candidly canvassing the actions of men, we may certainly arrive at their secret wishes and designs, and solve the problem. We cannot reasonably impute their apparent indolence and indifference to a sense of duty, or to a desire to support the rights of the State, for this would have roused their powers into exertion. Did it not then arise, partly from the wretched and confused form of Government, which they had themselves established, but principally from their, as yet, unsatisfied ambition? that ambition which had, upon so many occasions, rendered the Government more weak and confused than it was in its own nature. Ambition is often the product of wealth. It grows in a poor as well as in a rich soil. It is to be found in weak as well as great minds. The immense wealth of the Proprietaries naturally produced their ambition, which was perpetually stimulated, and kept in vigour, by their unlimited powers of dominion; and nothing less than perfect independence on the British Government could satisfy it.



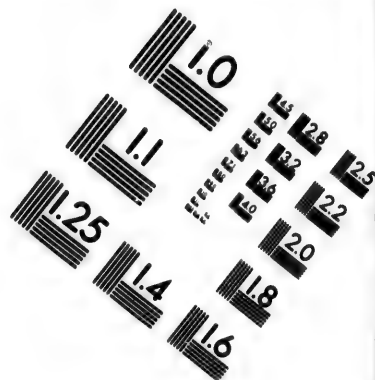
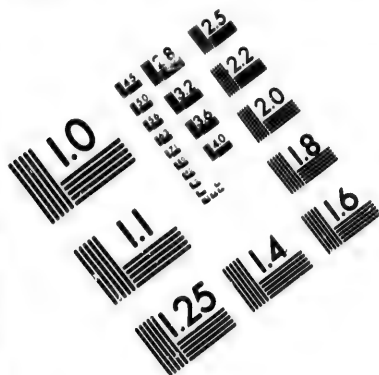
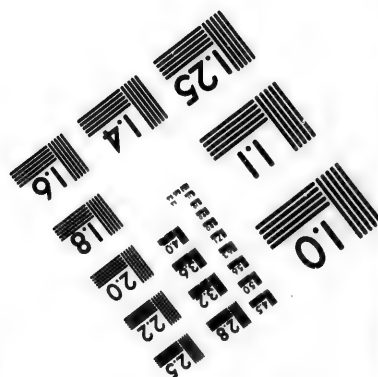
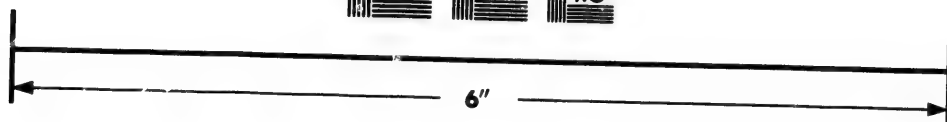
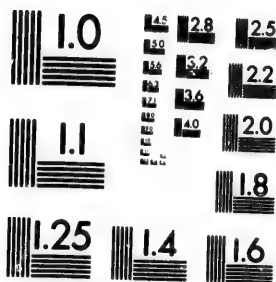


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

There is something more than conjecture in this assertion. For, weak as their power and influence were, they will not deny, that, had they exerted their authority at first, the insignificant mobs, composed of a few men, might have been easily suppressed, and the public peace preserved. Friends to public order, and men attached from principle to their Sovereign, were not wanting in this province. They ever formed a great majority of the people. Had these men been called on by the officers of justice, or only informed, that they would have been supported by the powers existing; or had they not perceived, that the officers, holding their commissions during the pleasure of the Proprietaries, and attached to their interest, were not only inactive in opposing those tumults, but were the promoters of them, the rising sedition could not have broke out into open rebellion in this province.

We must not, therefore, conclude, that the triumph of the seditious, in this Government, was altogether owing to the disposition of a majority of the people, or weakness of the Government; but, on the contrary, that

Proprietary ambition, which could not bear the character of a nominal dependence, was a principal cause of the want of exertion. Royal instructions had been often sent to Proprietary Governors, as well as to those immediately dependent on the Crown. The Assemblies, on several occasions, had presumed to appeal to the Crown from their arbitrary and unjust conduct; the British legislature itself had passed laws incompatible with the independent powers and supreme jurisdiction of the Proprietary Government; and several attempts had been made by the Crown to resume their Governments, and in one instance, it was resumed. These were intolerable checks to the boundless views of Proprietary interest and ambition, which, neither their immense estates, nor their extensive power, could gratify. Not content with being already the most wealthy subjects in the British dominions, they wished to become more so; and, not content with a nominal dependence on the British State, they wished to become perfect and absolute independent Princes. But this could not be, while the supremacy of Parliament, and superintend-

ence of the Crown, extended to their provinces. An opposition, therefore, which afforded a prospect of removing these obstructions to their ambition, could not be disagreeable to them. Their wishes, and their interest, they thought, led them openly to unite in it; their fears alone prevented it. Should the opposition fail in the attempt, they concluded, that, by not openly supporting it, they should save their Government. Should it succeed in establishing the claim of independence, they believed their Government would remain, and its independence be secured with the other States.

We can account for the conduct of the Proprietaries of this province, on no other principles. What less than these motives could induce the Proprietary, who was in actual possession of the powers of Government, to see the rising mobs, without calling on his officers of justice to suppress them, and even, without signifying on the occasion the least displeasure? Why did he suffer a number of the judges of his courts, superior as well as inferior, and other officers holding commif-

commissions during his pleasure, openly and actively to support the opposition, without taking from them their commissions, or even reprimanding them for their treason? We have seen, that signing a petition to the Crown against the Proprietary Government, was deemed a sufficient cause to remove a number of worthy men from their offices. Surely the seditious conduct of his magistrates, against the Government of the State, ought, at least, to have produced the same measure. Why did another of the Proprietaries, who held an estate, in remainder, in the Government, publicly avow the measures of the opposition both in Britain and America? Deliberate omissions, and breaches of such important duties, must be founded in strong motives; and what motives more powerful than private interest and ambition? And what was there left to gratify the ambition of men already possessed of such unlimited powers, but a deliverance from royal instructions, and a perfect independence on the State?

But art, where its object is not just and laudable, often becomes a suicide. Such was the fact in the present instance. The design of the Proprietaries were not only unattained,

but consequences the most ruinous to themselves and families attended these flagrant breaches of duty. They did not believe, that the same licentious spirit which intended to throw off their obedience to Parliamentary authority, meant also to overturn Proprietary Government, but rather imagined, that its feeble fabric would gain strength by the contest, and ride out the storm. They did not reflect, that their own Government, from its unjust and arbitrary conduct, had become more unpopular than that of the Crown, which was generally revered by all, their own dependents and the Presbyterians excepted; and, therefore, while the conduct of the mobs, committees, and conventions, rested only in treasonable opposition to the authority of Great Britain, they remained inactive spectators. But as soon as these lawless combinations discovered a design to overturn their own Government, every nerve was strained to save it. They then exerted their whole influence to suppress the convention, and to take the business out of their hands. For this purpose, a legal Assembly was called; and in order to secure a determination of the question in their favour, in direct breach of a royal instruction,

tion, an act was passed to increase the number of the members from the Presbyterian counties, which were thought most favourable to their interest. These members, it was hoped, would turn the scale in favour of Proprietary Government ; but it proved a mistake. The result of the business was, an utter demolition of all their power, and the establishment of a perfect democratical State.

Thus the Proprietary scheme to save their Government proved abortive. Never were there men, who have acted a part so undutiful to their Sovereign and country, or who have been so blind to their own interest. For, however low their lawless ambition might be brought by the loss of their Government, it was to be reduced yet lower ; for this loss was soon followed by that of their immense property †. The same republican spirit which they had at first countenanced and fostered, as soon as the new State was established, passed an act for applying the Proprietary estate to public uses, allowing to the family the small pittance of 120,000*l.* to be paid in Congress money, and that in four yearly payments, to commence after the independence of America should be established.

† See the Appendix.

Thus have Proprietary power and interest produced, and sharpened, the instrument of their own ruin. From hence, both Ministers and Proprietaries may learn a lesson of important instruction: the former, that such independent powers, and such immense property, cannot be lodged in the hands of a subject with any degree of safety, either to the peace of the State, or of the inferior society; and the latter, if they have any judgment left, respecting the security of their property, must be convinced, should the province ever be reduced to the peace of the Crown, that they are competent, neither to the preservation of its peace, nor even to protect their own powers or estates from usurpation and ruin.

C H A P. IX.

On the Charters of Rhode Island and Connecticut.

I HAVE before proved, that it is necessary, in the constitution of all inferior societies, that they should be formed on principles similar to, and correspondent with, those upon which the Government is established, because, in this policy, their union and subordination to the State consist. Without a due attention to this law, they can be fitted neither to receive the directions of the supreme authority, nor to yield obedience to them. But, on the contrary, they must ever be in continual opposition to its principles and measures, weaken its powers, and in the end bring on its dissolution.

We have seen, in the Proprietary Charters, this law entirely disregarded; and all the powers of the State conferred on a part of its subjects *for ever*, with full authority to alter and modify them at pleasure, without the least

least restriction. In consequence of these patents, we have also seen, that the Proprietaries, *in the plenitude of their power*, have formed their inferior Governments without the least judgment or discretion, without the least regard to the fundamental laws of the State, or to those principles by which alone the obedience and subordination of the people could be established; insomuch, that the supreme authority of the State, and superintendence of the Crown, are entirely lost in the independence of their constitutions.

Upon a view of the Charters of Rhode Island and Connecticut, we shall find, that Charles the Second granted them on principles equally inconsistent with his trust, and yet more so with any relation or subordination to the Government of Great Britain. For, if he constituted in the provinces of Maryland and Pennsylvania principalities with unlimited powers, by these Charters, he established in Connecticut and Rhode Island independent democracies, without a single principle of monarchy or aristocracy mixed in them.

The

The people of these provinces were emigrants from Massachusetts Bay, from whence they had been either banished, or had fled, to avoid the persecution of their fanatic brethren. They had lived upwards of thirty years, under Governments formed by themselves, without any authority from the Crown, according to their own political sentiments. They knew no subordination to, nor political connection with, the State.

Various were the motives which led these British subjects to wish for some authority from the State to support their rights of Government; but principally, the dread of the encroachments and violence of their Massachusetts neighbours. They accordingly solicited for, and obtained, Charters from Charles the Second; Connecticut in 1662, and Rhode Island in 1663. Although the forms of their Governments were not left to the discretion and modification of the patentees, as in the cases of Maryland and Pennsylvania, yet it is very probable, they were settled agreeably to their own ideas of polity; and that little of the royal consideration and judgment was exercised upon them. Both of them were as
dissonant

dissonant to the monarchical ideas of Charles, as they were consistent with the republican principles of the patentees. The grants may be said to be mere confirmations of those systems of popular rule, which the people themselves had established while they thought themselves independent.

The persons named in the several Charters, and such as should be "admitted free of the company or society," were incorporated into bodies politic; one, by the name of "The Governor and Company of the English Colony of Connecticut in New England;" the other, by the name of "The Governor and Company of the English Colony of Rhode Island and Providence." For the Government of each of these inferior societies, a Governor, Deputy-Governor, and Assistants, were appointed by the Charter. But these officers, for ever after, were to be annually elected by a General Court or Assembly. This Court was to consist of the Governor, Deputy-Governor, and Assistants, and a number of Delegates elected by the towns. The Governor, Deputy-Governor, and all other officers, judicial, executive, and military,

tary, were to be annually appointed by this general Assembly; but the Delegates, or Representatives of the people, who formed a part of the Assembly, were to be elected every six months. And on this popular Assembly, or General Court, deciding all matters by a majority of votes, all the legislative, executive, and federative rights, powers, and privileges, were conferred. They were empowered to make all manner of laws for the Government of the Colony; all that were necessary for regulating the order of the Government, for directing the morals of the people, for protecting them from foreign invasions, and for every other purpose that can be necessary to an independent civil society. And they were further authorized to settle “the forms and ceremonies of Government and magistracy, in what manner, and in what style,” they pleased, however contrary to the modes and principles established in the British Government: So that they might, if they thought proper, have instituted the same forms and ceremonies of Government and Magistracy as are to be found in China or Japan.

Thus

Thus were all the legislative and executive rights, which are necessary to the constitution of an independent State, conferred on a democratical Assembly. The civil and military rights of the Crown are granted in terms so indefinite, as to exclude all possibility of its superintendence; and the rights of the King, Lords, and Commons, are so completely transferred as to render no one act or regulation of theirs necessary to the safety or happiness of the people. The laws and ordinances to be made by the General Court, are to be strictly obeyed; while there is no mention of any obedience due to those of the State. There is, indeed, a provision, that the laws of these corporations shall not be repugnant to the laws of England. But this is yet more nugatory than the like provisions in the Proprietary Charters. For these politic bodies are not even directed to transmit their laws to the Crown for confirmation or repeal. Nor is there any appeal established from the courts of justice to his Majesty in Council; nor any mode settled, by which the Crown or Parliament can be regularly informed of their transactions. So that the Crown and Parliament must ever remain in the dark respecting their conduct.

Where

Where then can be the subordination of these members of the politic body to their supreme head, when they are rendered unaccountable and independent, stand in no need of its direction or assistance, and are competent in themselves to the relief of all their own wants and necessities. Or of what use can such a member be to the State? No more than an amputated limb to the human body. But it may be much more mischievous, as manifest experience has proved.

Possessed of these unlimited powers, and educated in republican principles, they consider themselves discharged from all subordination to the British Government, and assume all the rights of independent States. Indeed, had education been out of the case, these powers were irresistible temptations to the measure. But where the natural ambition of men is worked upon by the influence of both principle and education, it is impossible that it should otherwise happen. Such is the fact. These independent corporations have adhered to the powers of their Charters, or departed from them at their pleasure. The only rule which has directed their

O

conduct,

conduct, has been that of their own supreme will. Of this truth, the political history of these colonies affords a continued series of proofs.

They were forbid, by their Charters, to make laws contrary to the laws of England. Yet, in many instances, their laws have born a nearer resemblance to the code of the Jewish theocracy, than to that of the English constitution. In some, where life was concerned, the judgment of the court was to be founded on the "rule of the word of God." The Charters conferred no power to inflict capital punishment; yet, that punishment they inflicted on idolators, blasphemers, conspirators against their own Government, and even on disobedient and rebellious children. They instituted trials by juries, but, in effect, deprived the subject of that inestimable privilege, by giving the court an absolute power over their verdicts. They administered oaths of allegiance to their Government, but omitted those of supremacy and allegiance to the State, although their Charter expressly enjoined it. The Charter granted to the people liberty of conscience in the fullest manner,

I

yet

yet they denied the exercise of the religion of the Church of England, and compelled all the people, under a penalty, to conform to their own modes of worship. They violated the laws of trade and navigation openly and without hesitation, and in Rhode Island, they would not suffer their Governor to take the oath enjoined by the act of Parliament, for carrying them into execution. They would not suffer any customs or duties to be collected for the use of the Crown, because, they conceived, that they were able to raise the aids necessary to their own protection, and because those duties were granted by the Charter. They ever have treated Royal instructions with high contempt, because they held them inconsistent with, and violations of, the unlimited and independent rights of their Charter. They would not transmit their laws for confirmation or repeal, nor allow appeals from their courts of justice, because no direction to those purposes was contained in the Charter ; and, because they thought such powers in the Crown were incompatible with their independent rights.

When we enquire into the state of the peace and order of these democratical institutions,

we find them a scene of tumult and confusion. The annual election of the numerous officers of Government, and that of the Delegates in Assembly, every six months, induce perpetual canvassing and solicitations for offices. One election is scarcely ended before the competition and bustle for the next commence. Some men are striving to continue in their offices, others to supersede them. Hence, these colonies are the perpetual scenes of parties, public feuds, broils, and breaches of the peace, which altogether destroy the public tranquillity. All that awe and respect which are the great support of Government, and which are necessary to be paid by the lower class of people, to persons in office, are wanting. The Governor and Magistracy of the colony are upon a level with John the Farmer, who follows the plow for his daily subsistence, and whenever they meet, the first salutation of respect proceeds from the Governor or Magistrate; if not, he loses the Farmer's vote and interest at the next election. The popular man, though not worth a groat, or the man who commands a number of votes, however undignified by morals, education, or office, is the man of rank to whom the Officers of Government must

must pay respect and honour, or lose their offices. For the same reason, justice is precarious, and seldom fails to preponderate in the scale of the factious and popular, however unjust their pretensions. To the interest and influence of such men, the Judges are indebted for their commissions, and they are liable, every year, to be removed by them. A fear of that removal operating on the Judge corrupts his judgment, and renders his decisions erroneous and unjust.

Nor are these all the mischiefs which naturally arise from the unlimited powers and illegal constitutions of these Governments. Frequent contests for supremacy happen, in Connecticut, between the civil and ecclesiastical powers. Indeed, it is difficult to determine, whether the laity or the clergy governs the society. The churches, or the ministers and communicants, exercise a right to punish their disobedient and unworthy members. From their decisions, there is a right of appealing to the Associations, and from them to an ecclesiastical tribunal, yet higher, the Consociation. By the platform, which contains the system of their ecclesiastical do-

mination, the judgment of the Confociation must be final. But it often happens, that the culprit who thinks himself injured, will take the liberty of appealing to the General Court or Assembly. The appeal is generally received and determined, notwithstanding the claim of final decision in the Confociation. This is esteemed a high profanation of the sacred rights of the platform. And the ministers of the churches, who, with a number of the communicants, form the Associations and Confociation, never fail to revenge themselves upon the Governor, Deputy Governor, Assistants, and Delegates, (who had presumed to profane the rights of the church) by preventing their being chosen at the next election. A layman therefore, who wishes to obtain an office, must apply to the Minister for his recommendation, and before he can obtain it, must promise not to violate the sacred ordinances of the Platform. And yet such is the love of power in the minds of men, that the new members are no sooner elected than their promises are forgot; and fond of controuling the supreme power of the Confociations, they proceed, as usual, to determine the appeals. Hence, perpetual quarrel, and alternate domination, between

tween the civil and ecclesiastical jurisdictions. During the first six months after an annual election, the power of the laity prevails; and during the next six months before the ensuing election, that of the Ministers dominates. Thus the two scales, in this strange jumble of policy and dominion, are perpetually on the seesaw.

One instance more, of the illegal and seditious conduct of the people of Connecticut, ought not to be omitted. The Charter directs, that all the Officers of Government shall be appointed, annually, by "the greater part of the company," or freemen. From the date of the Charter to the time of the Stamp-Act, the candidate who had the majority of votes had been ever adjudged duly elected. But, when that act was passed, a novel and unprecedented construction of the words of the Charter was made to serve the purpose of opposing it. Governor Fitch, a gentleman of real integrity and loyalty, had given offence by taking the oaths required by the act; and yet, at the ensuing election, he retained so much influence as to have more votes for the office of Governor than any other candidate, and, consequently, was duly

O 4

elected

electd according to the Charter. But the Committee of Elections, contrary to all former usage, and the legal construction of the Charter, reported to the General Assembly, that no Governor had been electd by the free-men; for that although Mr. Fitch had a greater number of votes than any other candidate, yet he had not more than all the other candidates together. This report was approved, and the General Assembly, usurping a power not conferred by the Charter, declared Mr. Fitch not duly electd, and appointed Mr. Pitkin the Governor, on whose fidelity they could rely in opposing the act. Mr. Fitch was then electd Deputy Governor, by a great majority of votes. The Committee made a like report, and the General Assembly again rejected his election, and appointed Mr. Trumbull, the present rebel Governor, the Deputy Governor, although he had *a less* number of votes than any other candidate.

At the election in 1768, the people were in great divisions and confusion. Trumbull had 2600, Fitch 2550, and sixteen others had each about 2000, in the whole 37,150 votes. The Committee reported the numbers of
votes,

votes, for each candidate, to the General Court. Mr. Trumbull was a man whose seditious principles suited their own. The late exposition of the Charter was now to be reversed. The treasonable purpose for which it had been made was fulfilled; and Mr. Trumbull declared duly elected by the freemen.

James the Second, finding these colonies in a state of disorder and confusion, without subordination, and tending fast to independence, ordered Sir Edmund Andros, his then Governor of Massachusetts, to demand a surrender of their Charters. That of Rhode Island was accordingly made in the year 1686, by the Governor, Deputy Governor, and Assistants, without any coercion. The Charter was cancelled in form, and a new system of Government, under the royal authority, immediately instituted in its stead. That of Connecticut followed in 1687, when it was delivered up in form by the General Court, without any threats or menaces on the part of the King, save that of calling the Government to answer, in a due course of law, for its multifarious delinquencies and misdemeanours. A test which their rulers did not choose,

choose, for the most weighty reasons, that their conduct should undergo. But one Samuel Wadsworth, a factious and enthusiastic republican, at the head of a mob, rushing into the Court, seized on the Charter, after the surrender, carried it off without opposition, and carefully concealed it in the hollow of a tree. However, this act of violence did not prevent the royal Governor from assuming the Government, as he had done that of Rhode Island.

Under royal authority, these colonies continued until the year 1689, although not satisfied, yet without any open resistance, when hearing of the insurrection of the people of Massachusetts, mentioned in the next Chapter, and the consequent revolution, they resumed the Charter which they had formerly surrendered, without any authority from the Crown.

No sooner did these republicans return to the powers of their Charters, than their former tumults and confusion were renewed. Their old forms of Government, with their former code of laws, habits, manners, attachments,

tachments, and averfions, were adopted. Their former anarchy they preferred to royal rule, becaufe they had been educated in, and accuftomed to it. The fhort duration of the Royal Government had not made impreffions fufficiently ftrong to conquer the force of habit, nor to create a relifh for the more eligible bleffings of order and peace.

Under this confufed Government, the people of Connecticut and Rhode Ifland have remained ever fince, unhappy and miferable, equally difcontented with their own rule, as intolerant of their nominal fubordination to the British State.

What could be expected from a people educated in political principles fo repugnant to thofe of the British Government, but difaffection and averfion to it? What, from a people poffeffed of unlimited powers, but a thirft for independence? Is there a politician who confiders the propenfities of the human mind, and the powerful force of education and habit, who can believe that unlimited powers will not create a defire of independence,

ence, or that a people, educated in the school of democracy, can, in the nature of things, be attached to the principles of a mixed monarchy? The fish spawned and bred in muddy water, abhors the chrystal stream. The Spaniard, or the Turk, will not change his slavery for the most refined and best regulated freedom. Nor could the adventurous Omiah, impressed with the strong desire of information and knowledge, be prevailed on, in a few years, by the wonderful improvements and refined enjoyments of art, not to return to the principles and habits of his education.

From the premises, we must conclude, that a Government which intends to preserve the union and concord of its members, upon which its own strength and safety depend, must attend to their construction and education, by forming them on, and constantly maintaining in them, those principles which correspond with, and which will always support it. But in these inferior corporations, as they are established by their Charters, when we look for a political and subordinate connection, either with the supreme authority
of

of the State, with the powers of the Crown, or with any one of their fellow-members, we find it does not exist; and when, for the great purposes, to obtain which, men enter into civil society, namely, personal security and justice, we find them altogether unattained; and that the condition of the people is little better than it would be in a state of nature. Indeed, these strange systems of Government, give us the following absurd ideas.

An inferior member of a State, without subordination or subjection.

A Government without order, peace, justice, or safety.

A civil Society without a Head, or rather all Head, or a many-headed MONSTER.

C H A P. X.

On the Massachusetts Charter.

I HAVE before made some remarks on the first Massachusetts Charter †; enough to show that its powers were entirely democratical; and that the grantees were vested with all the unlimited rights of an independent sovereignty. This being the fact, it was natural to expect, that the people educated under it, however unprejudiced against any other particular form of Government, would, in a little time, become attached to democracy, and averse to a mixed monarchy; and that their extensive powers would create a desire of absolute independence. But this is only a part of the fact. The first settlers of this province carried over with them a strong aversion to the principles of the British Government. They were some of those sectaries, who, not content with that generous relief from Popish superstition and tyranny, which the Reformation gave them,

† See Chap. VI.

became

became intolerant of all restraint in regard to the forms and ceremonies of religion, and in their rage for further reformation, broke off from the established church.

The Reformation which began in the reign of Henry the Eighth, and was improved and established in that of Elizabeth, was undoubtedly a real good; and had it stopped there, or passed only a little further, it must have produced many blessings to mankind. But a rage for further reformation succeeded, and soon broke out into a variety of sects, who dissented from the Church, and became the reformers of the Reformation. But some of these sectaries, forgetting that the system of Christianity was founded in universal benevolence, adopted principles which excluded all benevolence, and utterly subverted those of the religion they meant to reform.

Among these sectaries were the Brownists, Congregationalists, Puritans, and Independents; these different denominations of Christians, differed more in name than in substance. They all agreed in the following tenets: "That all power, as well

“ well in civil as ecclesiastical affairs, could
“ only be lawfully placed *in the people* ; that
“ they could know no *temporal King*, be-
“ cause Jesus alone was their King both in
“ spiritual and temporal affairs ; and that
“ they, who were *the alone worthy*, and the
“ *alone elect*, were his agents and vicegerents,
“ who were to do his work upon earth, and
“ in the end, *alone* to receive the benefits of
“ his crucifixion and death.” Tenets which
most effectually destroyed that which renders
the Christian religion superior to all others,
and which were as pregnant with persecution
as those of the Church of Rome : and tenets
which rendered their subjection to a mixed
monarchy, and indeed to every other kind
of Government but democracy, in their opi-
nion, immoral and criminal. Possessed of
these seditious principles, they suffered under
those penal laws, which, in the infancy of the
Reformation, perhaps were necessary to its esta-
blishment ; and to guard it against the power
and influence of the See of Rome, its con-
stant enemy. Their sufferings, their enmity to
monarchy, and a desire to establish an inde-
pendent Government, under which their own
religion

religion should be alone protected, led them to this province.

The conduct of these fanatics, after their arrival in America, will abundantly prove, that this was their great design. So much of it as is necessary to my subject, I shall briefly lay before the Reader; referring him for a more particular information to the histories of Governor Hutchinson, a native of the province, who wrote from the best information, derived from many original papers, which he had with great industry collected, and from the records of the province; and of Mr. Chalmers, who has had the assistance, not only of former historians, but of the provincial records in Britain.

From these histories, and the authentic documents to which they refer, it will appear, that the emigrants to this province, before they had obtained their Charter, considered themselves as in a state of nature. Although they were British subjects, who had settled on British territories annexed to the realm, they thought themselves discharged from the British Government, and its laws. They formed

themselves into a body politic, without the least authority from the State, and assumed all the legislative and executive rights of an independent society. The Government which they established was entirely democratical, and the rule of their church, congregational. In both cases the power was lodged in the people.

When they had obtained a charter, they made its directions the rule of their conduct, or departed from them, on all occasions, as it suited with their designs of independence in Church and State. Religion being the great motive of their emigration, they immediately established their own fanaticism. This was done by a "covenant with the Lord, and "one another." The two great articles were, "That they would walk in all their "ways, as he should be pleased to reveal "himself to them; and that they would not "deal oppressingly with any *wherein they "were the Lord's steward.*" And as none but those who were of their faith could be of his flock, none others were to be admitted; of this faith the Elders were to be the arbitrary judges.

In the several emigrations there were a number of people belonging to the Church of England. These men justly conceived they had a right, under their Charter, to liberty of conscience, as well as those enthusiasts. And as they could not conform to the bigotted faith and ecclesiastical tyranny so lately established, they formed a meeting according to the rites and ceremonies of the Church of England. But this was considered as an act of nonconformity, and inconsistent with their design of establishing an exclusive and independent church. It was declared seditious, and tending to mutiny, and the poor Episcopalians were banished and sent to England. And thus the established Church of the nation was, with a presumption and injustice unparalleled, suppressed in its infancy.

This act was immediately followed by a law, declaring, that in future none should be admitted to the freedom of the body politic, but such as were members of their own church. By this law, directly contrary to the words of their Charter, which gave to British subjects, of every denomination of Christians, a right to emigrate and settle

within its limits, a major part of the people, then resident within the province, was deprived of their civil rights. This law continued in force upwards of sixty years, until the dissolution of their Charter.

But further, to secure the Government and territory of the province to themselves, "the only chosen people of God," they passed another law, forbidding all persons to entertain in their houses any strangers coming to reside among them, without the assent of one of the standing Council, or two other Assistants. Thus the foundation was laid for those cruel persecutions which gave rise to the colonies of Connecticut and Rhode Island, to the banishment and death of the Quakers, and to the oppression of the Baptists, which continued until the date of their late declaration of independence.

The same motives which induced them to pay no regard to their Charter, in settling their ecclesiastical rights, led them to disregard it in matters of Government, and totally to reject the principles of their Parent State. Instead of governing the society by the general statute and common law, or conforming to
their

their principles, as the Charter enjoined, they enacted new laws totally repugnant to them. Their code was founded on the laws of Moses, and much more sanguinary than the laws of England; they held, that the statute and common laws were of no force in their society, unless extended by its Legislature. They made a law to punish sedition and treason against their own Government, but omitted to punish sedition or treason against their Sovereign.

During the civil war, these fanatics, as far as their infant State enabled them, supported the pretensions of the Parliament and of Cromwell. Men or money they had not to spare. But they assured the Parliament of their good wishes and prayers for its success against the King; and their agents, with great industry and intrigue, fomented the seditious, because the design of the Puritans in England exactly corresponded with their own. The aim of both was, the subversion of the British Government, and to set up one on their own enthusiastic and democratical principles.

As soon as the usurpation was established, the General Court, no longer dreading the powers of royalty, concluded, that the æra of their independence was arrived, and that a little temporary servility to a Parliament, whose principles were so similar to their own, would soon obtain it. A kind of political courtship commenced between them. Mutual favours were conferred, but with very different views; on the part of Parliament, with design to support its authority over the Colony; and on the part of the Colonists, by a temporary submission to prevail on the Commonwealth to suffer them to enjoy their beloved independence.

The Parliament passed a law, exempting the New England Colonies from all customs and duties on goods imported to, or exported from them. This law the General Court ordered, without hesitation, to be entered in their minutes, “as a proof of the gracious “favour of Parliament.” And, although they had not passed any act to punish sedition or treason against the Kings of England, during their Government, they now ordered, that “whoever disturbed the peace of the
“Common-

“ *Common-wealth*, by endeavouring to draw
“ a party, under the pretence that he is for
“ the *King of England*, shall be proceeded
“ with either *capitally*, or otherwise.”

But these mutual favours between the greater and lesser usurpations did not extend so far as to induce the latter to give up their views of independence in Church and State. This inferior society, says Mr. Chalmers, “ in conformity to its accustomed principles, “ acted, during the civil wars, almost altogether as an independent State. It formed “ leagues, not only with the neighbouring “ colonies, but with foreign nations, without “ the consent or knowledge of the Govern- “ ment of England. It permitted no appeals “ from its Courts, to the judicatories of the “ sovereign State, it refused to exercise its “ jurisdiction *in the name of the Common- “ wealth of England*. It assumed the Govern- “ ment of that part of New England “ which is now called New Hampshire, and “ even extended its powers further eastward “ over the province of Main; and, by force “ of arms, it compelled those who had fled “ from its persecution beyond its boundaries

“ into the wilderness, to submit to its authority. It erected a Mint at Boston, impressing the year 1652, as the æra of their independence; and this practice was continued until the dissolution of its Government.”

All these independent powers, utterly inconsistent with any subordination to the Commonwealth, were exercised by the General Court, during its continuance. And thus, by a little temporising, the General Court outwitted even the cunning of Cromwell himself. And having thus acted as a State independent of the authority of Oliver, they declined, upon his death, to acknowledge that of Richard his successor.

The restoration of Charles was as unexpected as it was distressing to these fanatics. If they received the news of the usurpation with inexpressible joy, they received the account of the Restoration with as much fear and distress. They dreaded, from the power of Charles, a total loss of their Charter rights, as a just punishment for their disregard of them, for their usurpation of other rights not granted,

granted, for their suppressing the Church of England, and for those cruel persecutions and punishments which they had inflicted on all persons who differed from them in matters of religion; and yet, their fondness for independence, and enmity to monarchy, for a time, prevailed over their fears. For, although they were, so early as in July 1660, perfectly ascertained of the Restoration of Charles, they, under various pretences, declined to proclaim him until August 1661. What a contrast did this conduct exhibit to that of Virginia and Maryland? These provinces no sooner heard of the Restoration of their Sovereign, than they proclaimed him with a joy and festivity which demonstrated their sincerity and loyalty. But there was another circumstance which further discovered their enmity to Royalty. Whaley and Goffe, two of the regicides who fled to this province for safety, were "courteously received by the Governor," and treated by the people with universal kindness, until the warrant arrived for apprehending them.

These things were known to Charles, and yet, with unexampled tenderness, he endeavoured

deavoured to reclaim them to their duty as subjects. He promised them a confirmation of their Charter, pointed out the instances in which they had violated their public duty, and required, that they would review their ordinances, and reform their conduct. But this lenity and royal moderation had no effect on the spirits of men big with an insatiable thirst for independence both civil and ecclesiastical, unless it was to render them more bold in their lawless course of governing the province.

A conduct so perverse and wicked at length wore out the patience of the British Court. A *quo warranto* was issued against the Charter, and such proceedings were thereupon had, that, in the year 1684, it was declared forfeited in the High Court of Chancery. The reasons assigned in the writ for this forfeiture, are so just, so consonant to law, and so descriptive of the lawless and independent designs of the people, that I cannot omit them. They were, “ 1. That they, the General Court, assume powers that are *not warranted* by the Charter, which is executed in another place than was intended.
“ 2. That

“ 2. That they make laws *repugnant* to the
“ laws of England. 3. They levy money on
“ subjects *not inhabiting* the colony. 4. They
“ impose an *oath of fidelity to themselves* with-
“ out regarding the *oath of allegiance to the*
“ *King*. 5. They refuse justice, by not al-
“ lowing *appeals to the King in Council*.
“ 6. They oppose the act of navigation, and
“ *imprison the King's officers for doing their*
“ *duty*. 7. They have established a naval
“ office, with a view to *defraud the Customs*.
“ 8. No verdicts are ever *found for the King*
“ in relation to customs, and the Courts im-
“ pose costs on the prosecutors, in order to
“ *discourage trials*. 9. They levy customs
“ on the importation of goods *from England*.
“ 10. They do not administer the *oath of*
“ *supremacy*, as required by Charter. 11.
“ They have erected a Court of Admiralty,
“ *though not empowered by Charter*. 12.
“ They discountenanced *the Church of Eng-*
“ *land*. 13. They persist in coining money,
“ though they had *asked forgiveness for that*
“ *offence*.”

From the time of this forfeiture, to the
Revolution in England, the province was
governed

governed by the Royal authority. The powers of Charles and James were arbitrary, yet they were exercised over the Colonies with great moderation and justice; very different from what they meditated over the subject in Britain. The people possessed what they had never enjoyed before, equal liberty of conscience, more internal peace and justice, and a greater security against its foreign enemies. And yet these restless spirits, intolerant of all rule, except that which agreed with their fanatic principles, no sooner heard of the Revolution, than they entered into open rebellion. They seized on the person of the Governor and all his officers, and compelled him to surrender up the Government into their own hands,

The Royal Government being thus dissolved, after the example of their independent brethren in England, at the time of the usurpation, they appointed "a Committee of Safety," who published a manifesto in vindication of their rebellion. This Committee, soon after, called "a General Court, who resolved to resume the Government according to their Charter rights." They
were

were now in possession of the great object of their pursuits, independence; and, therefore, had no thoughts of proclaiming the Prince of Orange. But they soon found, that a Government thus usurped, and so confused, was feeble and incompetent to the preservation of the peace. Anarchy, with all the disorders and crimes incident to it, ensued. Besides, the General Court itself were conscious of the illegality of their powers, and feared that punishment which their usurpation and rebellion deserved. In this wretched state of their affairs, they received orders from William to continue the Government in his name, "until he should give such directions for the Government, as should conduce to *his* service, and the good of *his* subjects, within that colony."

This lenity in William was as unexpected as it was unmerited; it dispelled the dark cloud of fear which so lately hung over their minds. And, in proportion as their fear of punishment vanished, a hope arose, that they should succeed in procuring a confirmation from the Crown of their democratical Government. And, as an introduction to its
favour,

favour, they now, and not before, proclaimed William with that splendour which they hoped would convince him of, what was most distant from their hearts, their sincerity.

The Prince being firmly seated on the British throne, and the Commonwealth abolished, they perceived, that the tenure of their power depended on the pleasure of the Crown, and that present submission and solicitation were the most prudent plans of policy. Neither submission nor solicitation was wanting. Enthusiasm, whether in religion or politics, never wants industry. Their agents were incessant in their endeavours to procure a restoration of their old republican powers. But William was already too well acquainted with their repugnancy to the fundamental laws of the Government, which he had restored in England, and with the mischiefs that had thence arisen to the State, as well as to the colonists themselves. He saw that they were incompetent to the preservation of the order and peace of the colony, that they excluded, in a manner, the authority of the Crown and Parliament over the people; that they dissolved all subordination and relation between
the

the principal and inferior society; between the supreme will of the State and its members; and that an inferior society, established on such principles, would be as useless to the State, as an amputated limb to the human body, but by no means so innocent. For these reasons, that wise Prince, we may safely conclude, refused to restore their old Charter.

A new Charter was drawn, in which it appears, that the King wished to reform past errors, and to reduce the colony to some degree of subordination to the State. Some of the regulations seemed to lead to that measure, and perhaps, with a people whose minds had not been long before poisoned with republican principles, they would have had some effect. But the force of the remedy applied, was greatly inadequate to the power of the disease. To eradicate principles so deeply rooted in enthusiasm, and confirmed by education, it was necessary to make the reformation full and perfect. And this could only be done by establishing the same political orders, officers, and members, and upon the same principles, and by governing the people by the same general laws, which were established in the principal society.

society. This, and this only, would, in time, have imperceptibly alienated the minds of the people from their democratical polity, and reconciled them to a mixed form of Government. But the regulations of the Charter fell far short of this remedy. The fundamental laws of the State were not adhered to, but violated. The rights of the Crown, the necessary check to popular ambition and licentiousness, and the balance of power between the monarchical and democratical order, were all swallowed up in the heterogeneous and repugnant principles of this inferior democratical system.

To support these truths, we must have recourse to the Charter. Here we find the form of the old Government was not altered. It consists, as before, of a Governor, Deputy Governor, Counsellors, or Assistants, and an Assembly. These politic members form three orders or branches. Thus far they resemble the Constitution of the British State. But the resemblance goes no farther. The principles upon which they are established, are as different, in polity,
from

from those of the State, as the principles of democracy are from those of monarchy.

The Governor and Deputy Governor are indeed appointed by the Crown. From whence, one would imagine, without attending to other circumstances, that they were dependent on, and a just and proper representation of it. But the fact is far different. Their weight and influence in Government, are little more than a shadow. The excellence of the English Constitution consists, as I have shewn, in having three orders, all independent of each other, in their rights, and in their estates; both being necessary to a free and unbiaſſed exercise of their judgments. And, therefore, the King holds the civil list, as the support of his family and dignity, for life. The Lords have their estates, and the Commons theirs, independent of each other. Let us suppose, that the King, or Lords, were dependent on an annual vote of the Commons for the support of their dignities and families, what would become of their independence, and how soon would the structure of the mixed monarchy be dissolved? But the intent

Q

of

of the constitution goes farther ; for, it is not only necessary to the maintenance of that check, on the natural licentiousness of the people, which is vested in the King, that he, but that all his officers, should be independent of the popular order of the State. And, therefore, in Britain, their support is included in the civil list, or in the perquisites of office, established by permanent laws. But the Governor, and Deputy Governor, the Representatives of the King, in this inferior society, have no settled salaries. They are dependent on the General Assembly for such as it shall, from time to time, be *graciously pleased to grant*. And, if they are dependent on the Crown for their appointments, they are dependent on the Assembly for their *daily bread*. This bread is ever given in proportion as these officers gratify the donors in their licentious designs, *or not at all*. Hence, it often happens, that the duty and interest of a Governor are in opposition to each other. The first leads him to obey one master, while the second compels him to sacrifice his judgment to another. If he opposes the measures of the Assembly, he starves; and if he confirms them, there is only a
chance

chance of his losing his office. For experience has taught him rather to rely on royal favour, than on the mercy of an obstinate, disgusted, popular Assembly, which never ceases to pursue its designs while there is any hope of success.

The Counsellors, or Assistants, which form the second branch, and which ought, in an inferior degree, to represent the second order of the State, instead of receiving their appointments from the Crown, or its Representative, are annually appointed or removed by the General Court. This Court consists of the Governor, Council, and Assembly; the Council of twenty-eight members, and the Assembly of one hundred and eighty. For the election of the members of Council, they meet in one house, and the election is made by a majority of votes. The power of electing whom they please, is, therefore, always in the Assembly, who having near seven votes to one of the Council, can always overrule their judgments at pleasure. The Governor has the insignificant right to put his negative on any person elected a member of the Council. I call this negative insignificant,

Q 2

because

because these popular orders having the election in their own hands, will ever elect and return to the Governor, for his assent or negative, such men as they conceive will support their own popular measures. And should an improper person be rejected by the Governor, another, a third, or a fourth, equally, or more improper, would be elected and returned, until the Governor should confirm the election. So that the Council, instead of being an independent order, is entirely dependent on the democratical and lowest branch of the Government, and, consequently, morally incapable, and unfit to answer the end intended by the institution of the middle order. For, instead of forming an independent check and balance against the illegal attempts of the other two, it is naturally led to throw its whole weight into that scale from whence *it receives its existence*, and which *may take it away at its pleasure*. It is so far from being an indifferent independent power, that it is a weight improperly added to the democratical branch, which must ever render it too powerful for the monarchical, and above *all check or controul*.

The

The Assembly, or third order, is elected by the different towns and districts, and in this respect, is substantially a representation of the House of Commons. It claims, and exercises all the independent powers, rights, and privileges, of that order. But its rights and powers, under the Charter, do not stop here. Besides the right of appointing the middle order of the Government, it participates in many of the executive rights and powers of the Crown, insomuch that the exercise of them must originate with the Assembly, and cannot be carried into effect without their consent.

Such is the constitution of the legislative authority of this Government. What are the powers conferred by the Charter on its several orders? In their legislative capacities, they sit and act as three distinct branches. The Council, or Assembly, prepare bills, and having agreed, they send them to the Governor for his concurrence or dissent. The Council being in a manner appointed, and liable to be removed by the Assembly, once in every year, it is reasonable and natural to conceive, that an harmony in judgment will generally subsist be-

tween them; and that on any favourite bill their united force will be ever exerted against that of the Governor^s. And the Governor being dependent on them for his salary and subsistence, it is as natural and reasonable for those who consider the frailties of human nature, to believe, that the firmness and virtue of a Governor thus circumstanced, are scarcely to be depended-on. What then can be the weight or importance of the Governor's right of dissent to the laws proposed by the other branches of the Legislature? The true answer is "nothing, or at least next to nothing." The influence and weight of the orders which ought to represent the monarchical and aristocratical branches of the State, are chained, like Prometheus, to a rock, never to be effectually unloosed while the Charter exists.

To the Governor, and this General Court, or Assembly, the supreme direction of the Government was granted in the following indefinite terms; " And we do, for us, our
 " heirs and successors, give and grant to the
 " said Governor, and the Great and General
 " Court or Assembly, *full power and author-
 " rity,*

" rity, from time to time, to make, ordain,
 " and establish, *all manner* of wholesome
 " and reasonable *orders, laws, statutes, or-*
 " *dinances, directions, and instructions*, either
 " with penalties or without (so as the same be
 " not repugnant, or contrary to the laws of
 " this our realm of England) as they shall
 " judge to be for the *good and welfare* of
 " our said province and territory, and order-
 " ing thereof, and of the people inhabiting,
 " or that shall inhabit the same, and for the
 " *necessary support and defence* of the Govern-
 " ment. And to name and settle, *annually*,
 " all civil officers within the said province
 " (such officers excepted, the elections or
 " constitution of whom we have, by these
 " presents, reserved to us, our heirs and suc-
 " cessors, and to the Governor of the pro-
 " vince), to *set forth their several duties,*
 " *powers, and limits, and the forms of such*
 " *oaths*, not repugnant to the laws of Eng-
 " land, for the execution of their several
 " offices; to levy proportionable and reason-
 " able rates and taxes, on the persons and
 " estates of the inhabitants, for *the necessary*
 " *defence and support* of the Government.
 " And to dispose of all *matters and things*,

“ whereby our subjects, the inhabitants of the
“ said province, may be *religiously, peace-*
“ *ably, and civilly governed, protected, and*
“ *defended.*”

The modifications and extent of these powers require no comment. The reader will, on the first perusal, perceive, that they are as evidently repugnant to the principles and fundamental laws of the State, as language can make them: That their structure is, in effect, that of a perfect democracy, while the constitution of the State is a mixed monarchy: And that there is no matter susceptible of human direction, and necessary to the safety of an independent society, or to sovereignty itself, to which this inferior member is not made competent. In what then can consist its subordination to the State, or its political connection with it?

The constitution of the executive powers was not less impolitic and inconsistent with the fundamental laws of the State, than the legislative. The Governor possesses a power to call, prorogue, and dissolve the General Court, within the year. But this right is rendered of little consequence by the annual elections,

elections, and the superior influence of the democratical order of the society. For, when he has dissolved the General Court, that dissolution has ever recommended the old members to the favour of the people; and there has been scarcely an instance in which the same members have not been re-elected; and when met they have seldom failed to resume the former subjects of controversy. Their sentiments thus confirmed by the voice of the people, their former pursuits are never given up, however unjust, or however inconsistent with the rights of the Crown, or the balance which ought to be preserved between the different orders of the society, or however mischievous to the interests of the society itself. And by an obstinate perseverance in their ambitious designs, the Governor, at length, tired with disputes, dependent on them for his salary, and incapable of maintaining the rights of the Crown, yields them up, with his judgment and duty, to an influence which he has not power to controul.

The Governor has likewise authority to
“ appoint Judges, Commissioners of Oyer
“ and Terminer, Sheriffs, Provosts, Marshals,
“ Justices

“ Justices of the Peace, and other Officers to the Council and Courts of Justice belonging.” But even here his judgment is in political bondage. He must, first, give seven days notice to the Council to meet ; and obtain their “ advice and *consent*” to every appointment. Thus a legislative popular order has a negative on the person holding the executive authority, may dissent from him as often as they please, and put him under the necessity of nominating others, until he shall fix upon those that are under their influence, or of presiding over a society without Officers to execute the laws, and to transact the business of Government. The right to constitute all other civil Officers, and to remove them from their offices, is vested in the Council and Assembly, independent of the Governor. So that the Governor, who ought to possess the sole and exclusive right to the executive powers, has not a right to appoint one civil Officer.

In this strange and absurd manner, are the three principal orders of the Massachusetts Government jumbled together, into one political chaos, in direct contradiction to the fundamental

damental laws and polity of the State. Those checks, and that balance, which ought to extend through every political member, and which constitute and secure the liberty and safety of the principal system, are effectually destroyed. Instead of a perfect representation of the monarchical and democratical powers placed in opposite scales, nearly balanced, with an indifferent and independent aristocratical order, ever ready to controul the illegal attempts of the other two, the monarchical exists only in name. The aristocratical influence is thrown into the democratical, and the democratical, which, from the nature of man, stands most in need of controul, is *the source of all power, and above all controul.*

Candour requires, that I should now take notice of those articles which seem to create any degree of subordination in this inferior society. There is, in this, as in some of the other Charters, a reservation of a right to appeal from the judgment, or sentence, of any Judicatory or Court within the province, to the King and his Privy Council. But this appeal is confined to personal actions. The
subject

subject has no remedy against an erroneous and unjust determination in actions real or mixed, should any person be found so hardy as to appeal from a decision given by the General Court, where all causes are ultimately adjudged.

There is also a nugatory injunction, without a penalty, to transmit the laws for the "Royal approbation or disallowance," to which the remarks I have made on the like injunction in the other Charters will justly apply. I need not, therefore, repeat them here. The Governor holds the right of appointing the military Officers, and of commanding the military force of the province. But this, of all the numerous rights and prerogatives of the Crown, is the only one delegated by the Charter to him. The others, we have seen, are vested either in him jointly with the Council, or in the Council and Assembly, subject only to his negative. A prerogative thus unsupported, and liable to be controuled by the weight and influence of the Council and Assembly, must be truly unimportant in the society; it can never support the civil Magistrate in his endeavours

vours to preserve the internal peace, or to repel the force of an external enemy, or to maintain the rights of the principal society.

It is also a provision in the Charter, that the laws made for the regulation of the colony, are not to be "repugnant, or contrary" to the laws of England. The intent of this provision, when we consider the unlimited powers granted, seems difficult to understand. Had the fundamental laws of the State been pursued in the structure of the inferior society; had the legislative powers been confined to such local laws and regulations, as might be necessary to promote the design of the patent, leaving the people to be governed by the general laws of the supreme authority; this provision would have been intelligible, because it would have consisted with the fundamental laws of the State, and with those principles upon which all inferior societies have ever been, and ought ever to be, constituted. The Charter would then have spoken this plain and sensible language, "The people of the colony are to be governed by the general laws of the supreme legislative authority. But they shall, notwithstanding, possess

“ possess a right to make all such laws as may
“ be necessary to promote the settlement,
“ cultivation, and improvement of the
“ colony, to which they are, from their local
“ and more circumstantial knowledge, rea-
“ sonably presumed to be more competent,
“ provided that even those laws shall not be
“ repugnant to the general laws of Eng-
“ land.” Here would have been consistency.
The provision would have agreed with the
general regulations. But, inasmuch as the le-
gislative powers granted by the Charter were
unlimited, and might be extended even to a
rejection or repeal of the general laws of the
State, and to the making any others in their
stead, and as the Charter strictly confines the
allegiance of the people to the colonial laws,
this provision is evidently absurd and nugatory.
It is absurd, because it creates no subordina-
tion; and it is nugatory, because it is super-
seded, or rendered ineffectual, by the unlimit-
ed powers of the Charter. And it is nuga-
tory for a yet better reason, because no King
of this realm ever possessed a power to enable
the people to make laws “ repugnant” to the
general laws of the State, nor even to suspend
the force of, or to exempt British *subjects* in-
habiting

habiting *British territory*, either within or annexed to the realm, from the obedience due to the laws of the *British legislature*. It is impossible to conceive a power more dangerous to the constitution, or more inconsistent with the nature of civil society, be its form what it may. For if the King may discharge his subjects from their allegiance to the legislative power, of which he is only the supreme trustee, he may apply that allegiance to what mode of Government he pleases. He may, as James I. did in the Virginia Charters, assume the complete powers of a despotic legislator, and direct the allegiance of the people to himself: Or, as Charles I. and II. did, he may grant them to others, in perpetual inheritance, and thus subvert that constitution of Government which he is entrusted to preserve.

But whatever may have been the intent of this provision, it is certain, that neither in the Proprietary nor Charter colonies, has it been interpreted, either by the Proprietaries or the people, in a sense consistent with their subordination. Both of them have considered the word "repugnant," as so general and indefinite,

finite, that they could apply it, at all times, to their own sinister views and purposes. They have said, that laws may be widely *variant* from, and yet not “*repugnant*,” or *contrary* “to the laws of England;” that “no laws can be repugnant,” which are not palpably *contradictory* and *opposite*: and have acted accordingly.

One example among many will illustrate their language and conduct. The common law declares, that, upon the demise of a parent, his lands, held in common socage, shall descend to his eldest son. Now, to make a law “repugnant” to the common law in this respect, it must be, that the youngest son, to the disinheritance of the eldest, shall take the patrimony. But that a law which gives to the eldest son a part ever so small, is only *variant* from, but not “*repugnant* to,” the common law. In this manner, the Colonists have reasoned, and in conformity to their republican principles, which are to destroy all distinctions of rank, and reduce every man in the society, as nearly as possible, to a level, in regard to honours and estate, they have passed acts for making partition of lands

6

among

among all the children, allowing the eldest son only a double portion. And this, they contend, is no deviation from the sense of the provision.

Nor have they hesitated to go further. The general laws of England, made for the security of the persons and properties of the subject, have met with the same fate. They have altered almost all the laws relating to felonies, larcenies, and other offences against the peace of society. They have inflicted penalties, in some instances, much more severe; in others, more mild; and, in general, widely variant from those imposed by the laws of England. In Pennsylvania, no statute, relative to the peace and order of the colony, is adjudged to be in force, unless specially extended by an act of the Proprietary Assembly. In the Massachusetts Government, they have declared, that no law of the British Legislature shall be of force, unless re-enacted, or extended, by their own legislature: And in all Charter Colonies, they have conducted themselves agreeably to this principle. Thus is the polity of all States, whether civilized or Barbarian, reversed. The inferiour and subordinate power

R

gives

gives validity to the acts of the superiour—of the supreme authority, or rejects them at pleasure ! Politicians may look, if they please, for order, consistency and subordination in the inferior societies, where these powers prevail ; I shall leave them to be convinced by the event. That must set them right. I wish it may not be when the mischiefs arising to Britain from such powers are beyond all remedy.

To these unlimited, and, by their several constitutions, supreme Legislatures, and to these laws, thus variant from the laws of England, the Colonists, by the Charters, are strictly enjoined, under the penalties contained in the laws, to give their allegiance ; and, in consequence of this injunction, they are sworn to do so. If this is not a direct discharge of British subjects from their allegiance to the British Government, it certainly amounts to one ; and could we suppose, that the Charters were founded in legal and constitutional authority, it might be pleaded in effectual bar. For the doctrinal truth, that “ A man cannot serve two masters,” if we had not received it from the highest authority, is too evident to common sense and experience

ence to be denied. A man cannot assent to two repugnant propositions. How then can the same men be the subjects of the Proprietary and Charter Governments, vested with the unlimited powers before described, and having laws so dissonant to the laws of England, and yet remain subjects of the Government of Great Britain? It is in the nature and reason of things impossible.

Of this impossibility the disaffected republicans in America, before their declaration of independence, availed themselves in argument against the authority of Parliament. They have contended, that seeing it impossible to obey two different complete legislative powers, and that they are sworn to obey that of the Colony, they can owe no allegiance to the British Parliament; and, therefore, that the King, in America, is not a representative of the British State, but only the distinct representative of the several colonial legislatures; that though the King was their King, yet the Parliament was not their Parliament, because they were bound to obey laws different from the laws of Parliament; that when they

swear allegiance to the King, it is to him as supreme representative of the Colonial Legislatures, and not as representative of the British Parliament; and that there is “no absurdity in supposing, that an oath of allegiance, taken by the Colonists, to be taken to him, to the King as representative of the *supreme legislative power of the Colony.*”

This doctrine, there is much reason to believe, would have been palatable to James I. The complexion of the Charters, granted in his time, countenances the conjecture. Nor did the public conduct of Charles I. or II. reject the idea. All of them endeavoured to increase their own power at the expence of that of the legislature. But the whole tenor of his present Majesty's conduct must convince the world, that he has acted on very different principles. He has rejected and reprobated the offers of the sovereignty of America, independent of his Parliament. Faithful to his royal trusts, and determined to preserve the liberties of his subjects, he has constantly declared their offers to be treason against the State. In his speeches from the throne, he has pronounced the authors of them

them rebels, and called on his Parliament for assistance to enable him to defend their own rights, and the rights of his people, from so daring an usurpation.

To trace, in detail, the turbulent and seditious conduct of the people under this Charter, would be more tedious than entertaining. It would protract this chapter to an inordinate length. Besides, this task is already performed by that faithful Historian, their late Governor, Hutchinson. To this History I will presume to refer the more inquisitive reader, contenting myself with only observing, that the new Charter did not, in any respect, change the measures or opinions of these deluded people. The same restless and republican spirit—the same enmity to the constitutional authority of the State—the same thirst for independence in Government—the same attempt to wrest from their Governors the few rights and prerogatives which were reserved in the Crown, and the same public commotions and convulsions, continued down to their declaration of independence. Nor could any man of reflection expect it could happen otherwise. The Charter was not cal-

culated to produce a change in the manners, opinions, and designs of men, which had been so long confirmed by education. Nothing short of a Charter founded in the principles of the British Government, and a strict adherence to those principles, could have produced that effect.

Had William constituted, by this Charter, an inferior body politic, consisting of a perfect representation of the Crown, vested, in a subordinate degree, with its legislative and executive rights, and always accountable to it, a middle independent order, representing the House of Lords, and a representation of the people; and had he enjoined a strict obedience to the general statute and common laws of the realm, reason, and all experience, must convince us, that those republican ideas which had been fostered under their old Charter, must have been gradually, and long before this time, eradicated, and an attachment to the principles of a mixed monarchy formed in their stead. Their desire of independence would have been lost in a sense of the benefits which they would have received, from their subordination and subjection to the most rational

tional system of protection and government in the world. But the Massachusetts Charter was formed on principles so repugnant to those of the State, that they could not fail to create in the people an enmity to it, had their minds been ever so unprejudiced. It was perfectly adapted to nourish and support that spirit of independence, which the first settlers carried over with them, and which became daily more confirmed under their first democratical Charter.

Numerous are the facts which prove, that this inferior society has never failed to take every advantage of the confusion and distress of the British Government, to throw off their dependence. In the time of the civil wars, which produced the usurpation, they secretly enjoined their agents to assist in fomenting and increasing the sedition. When the usurpation was effected, they, with infinite address and dissimulation, courted and flattered the commonwealth, but refused to carry on the business of their Government in its name, or under its authority, and acted, during its continuance, as an independent sovereignty. When Charles was restored, they declined for

more than a year to proclaim him, and then did it with the utmost reluctance. At the time of the Revolution, they seized the Governor appointed by James, and usurped the Government; but not with design to deliver it up to William, nor to become subordinate to the constitution which he had restored, and therefore they proclaimed him with as much reluctance and chagrin, as they had done Charles the Second.

The question here occurs, what could have induced them so frequently to return to their nominal subordination to the British Government? The true answer is, Necessity. Their enthusiasm and rage for independence, often led them to attempt it when their own weakness forbade it. Whenever the British nation was distracted by internal discord, or distressed by foreign wars, they thought it the period which Heaven had destined for their deliverance; and therefore they always embraced such opportunities to set up the standard of independence, hoping that those discords and wars would end in the destruction of the British monarchy; not considering their own weakness, and the superior power of the Parent State,

6

when

when its peace should be restored. Their hopes led them into rebellion, their disappointments into the most abject submission.

At the conclusion of the last war, much experience had proved, that they had but two difficulties to surmount; the power of the British State, and that of the Canadians and Indians. They thought this the proper time to get rid of one of them. Fortunately for their design, it happened that Doctor Franklin, a Bostonian by birth, a republican in principle, and a person of great intrigue and abilities, was then a colony agent in London. This gentleman was employed to prevail on the Councils of Britain, to give up, in the treaty of peace, some of the West Indian conquest for the cession of Canada. For this purpose, he published a pamphlet, intitled, "The Interest of Great Britain considered, &c." The intrigues of this Colony prevailed, Canada was ceded to Britain, and the seditious succeeded in delivering themselves from one great check to their independence.

Upon

Upon this event, the enthusiasm of these people immediately pronounced in their public papers, that "the corner-stone of a great American empire was now laid." Freed from their incessant wars with the natives and Canadians, bordering on their territories, they had leisure to brood over, and to carry into execution, those other measures which led to the accomplishment of their long meditated and so often disappointed independence. They well knew, that the Middle and Southern Colonies had not yet entertained the thought. They also saw, that it would be necessary to procure the assistance of these Colonies. To obtain that assistance from the people of the Church of England, Methodists, Quakers, Lutherans, Swingfielders, Dumplers, Anabaptists, Moravians, they knew was impossible. The people were, in general, too firmly attached to the principles of the British Government, to enter into rebellion against it.

But there were sectaries whose principles in religion and government were analogous to their own in all the Middle and Southern Colonies; I mean the Irish Presbyterians. To them they secretly communicated their design,

design, and made their application for aid. But the several churches of these sectaries, agreeably to the principles of their church government, were disunited. No one had a connection with another. It was therefore necessary, that their union should be effected, in order to enable them to join in a body with the eastern sedition. This measure was warmly recommended by agents from Massachusetts. A Synod was formed at Philadelphia, representing, and uniting, all the Presbyterian congregations from Georgia to Nova Scotia. For this measure, religion was made the ostensible pretext, though the independence of America was the secret and real motive.

Between this Synod and the Grand Committee, representing all the congregational and independent churches of New England, sitting annually at Boston, an union was formed, not for assimilating their religious tenets, for that was impossible, and therefore never attempted, but to carry their great plan of independence into execution. In short, this was a political, and not a religious union. This truth appears evident from a circular letter,

ter, and the articles of union*. In which their declared purpose is, to “ unite themselves more closely together, so that *when there may be a necessity to act as a body*, we may be enabled to do it whenever they may be called together, *to defend their civil as well as religious privileges.*” This union was formed immediately after the cession of Canada.

Thus united, these two lawless combinations devoted, annually, a part of their time, to watch over not only the civil authority of their respective provinces, but that of Great Britain. When the regulations in the Stamp Act came to be executed, the right of Parliament to pass it became a subject of their discussion. They were not a long time in determining, that the Parliament had no authority to pass it, and therefore, that it was a violation of their civil liberty. And, as the influence of the New England Committee, and the Pennsylvania Synod, over their people,

* See this letter and articles in a pamphlet, intitled, “ Historical and Political Reflections on the Rise and Progress of the American Rebellion.” Published by Wilkie, St. Paul’s Church Yard.

is little short of that of the Pope, they unanimously joined in opposing that act. Their influence had also its effect on some persons of other religious denominations, who were deluded with the specious name of liberty. But unanimity in the opposition was the peculiar characteristic of those people, while a great majority of the members of the Church of England, and many of the Lutherans, Calvinists, and Baptists, were averse to it, and the Methodists, Quakers, Moravians, Swingfielders, Mononists, and Dumplers, generally avoided all connection with the sedition.

The success in frightening the supreme powers of the first State in Europe into a repeal of the act, was a victory not to be forgot. It convinced them, that industry and perseverance in their treason, would ensure their wished-for independence. Nor was their industry or perseverance wanting. Between the repeal of the Stamp Act and the subsequent regulations of Parliament, the Bostonian agents were constantly employed throughout America, in deluding the people to take part in their future sedition. When the Tea Act passed, they were prepared to meet it. An
union

union of the Congregational, Independent, and Presbyterian interests, was now perfectly established. The plans of their future operations were laid. They had made many profelytes to their sedition among people who differed from them in religious sentiments, under the specious pretence of defending their liberty. But what they most relied on was, an alliance which they had now formed with a faction in Britain, who, lost to all sense of their country's welfare, entered into an agreement, to clog, and, if possible, to chain down the powers of Government, while it received all manner of unjust reproaches, insults, and indignities, from its rebellious subjects. *On the fidelity of these allies rested the great hope of rebellion.*

Thus prepared, the faction in Massachusetts determined not to be inactive in their sedition in America, while their faithful friends in Britain were taking every measure in their power to encourage its progress, and to prevent its being suppressed. Their letters mis-
sive, and their industrious agents, traversed all the British Colonies. The design of their religious combinations could no longer be concealed.

The

The word went forth, and almost every Congregational and Presbyterian pulpit throughout North America, resounded with the abuse of Majesty, and treason against the British Government. Lawless Committees and Conventions immediately started up, principally composed of these sectaries, and the flame of rebellion was soon communicated in a greater or less degree to all the Colonies; the consequence of which is too well known to be here recited.

Before I conclude these reflections on the Colonial Governments, I should not do justice to my subject if I did not observe, that they do not rest on mere speculative arguments. They stand confirmed not only by the strongest reasons, but very late experience. For they are founded on these incontestible facts, well known to every person who is acquainted with the rise and progress of the American rebellion: That, in the New England Colonies, from their first settlement, there has been an unremitting opposition to the legal exercise of the Royal prerogative, and the Parliamentary authority; whilst that opposition has been scarcely known in any other: That the Massachusetts is the
only

only Colony which, before the present revolt, ever entered into open rebellion; the Colony which first, in its public councils, denied the authority of Parliament; and the Colony which first raised money, and levied men to oppose it: That the present revolt was first meditated, and with great facility brought to perfection by the factious in the three eastern governments, before it was thought of in any of the other provinces: That the principles of the revolt were by the most indefatigable industry propagated by them through the other Colonies: That the Proprietary Governments next caught the infection, and embraced the treason: And that the Royal Governments came into it last, and then with great reluctance.

From these facts, and the preceeding arguments, so fully supported by reason, we may certainly draw the following unerring instruction.

1. That the structure of all inferior politic societies ought to be established on the same principles of polity with those of the State, as it was settled at the Revolution, if we mean
to

to establish and preserve their subordination and obedience to the British Government.

2. That in proportion as this rule shall be observed, there will be in the people a greater or less attachment, or a greater or less propensity to throw off their subordination and allegiance to the State. And

3. That while they remain established on principles so heterogeneous and repugnant to those of the principal system, no permanent union nor harmony can exist between them and the State. A dislike to its polity, and a reluctance to be governed by it; added to an anxious and restless desire of independent rights and powers, must prevail; and rebellion and revolt be the reiterated consequences, until independence is finally obtained.

If these conclusions be just, we may certainly, without too much presumption, draw a fourth, That if the British Councils mean, hereafter, to consider the American Colonies as annexed to, and parts of, the realm; and as subordinate members of the British State; if

S

they

they wish to destroy the causes of internal discord and tumult, and to confer on the people the benefits and blessings of upright Government, a reformation in their systems of polity must take place. They must be brought nearer to those principles upon which the Government of the principal society has been established, and which alone can unite and bind them to it. For, otherwise, it does not require the spirit of prophecy to foretell, that, in much less time than half a century, or, indeed, at the first favourable opportunity, they will renew their claim to independence, and again take arms, and form foreign alliances to support it. The same causes must ever produce the same effects; and when invigorated by additional powers, effects much more mischievous and dangerous to the safety of the empire. The numbers and wealth of the Colonists will be increased—their resources enlarged, and their powers to accomplish their design be beyond prevention. The blood and treasure we have already spent in fostering, protecting, and bringing them back to their duty, and perhaps much more, will be wasted. The Colonies will be lost to Britain, and Britain will sink

into insignificance among nations, through the neglect or want of firmness in the politicians of the present day, should they not attempt a measure of such infinite importance to both countries, which *is earnestly desired by a great majority of the Colonists themselves.*

F I N I S.